Supreme Court, U.S.
FILED

①

No. 04 1706 JUN 13 2005

OFFICE OF THE CLERK

In the Supreme Court of the United States

MILLER CITIZENS CORPORATION DON and NANCY ENGEL; MARGIE A. FRANTA; MARY JANE GRENNON; BENJAMIN W. HECHT; EVELYN H. REAVES; KEITH and DANIELLE SLEIGHT; SHERRY L. WILLIAMS; ALETTA HICKS; Voters, Taxpayers, Citizens and Residents of the County of Lake, State of Indiana, COMMON COUNCIL OF THE CITY OF HAMMOND, INDIANA;

Petitioners,

v.

STATE OF INDIANA, ex rel THE ATTORNEY GENERAL of the STATE OF INDIANA, UNITED STATES STEEL CORPORATION; ISPAT INLAND, INC., INTERNATIONAL STEEL GROUP, INC.; BP PRODUCTS NORTH AMERICA, INC., Formerly Amoco Oil Company, and using Amoco Oil Company as an Assumed Business Name; as well as other fictitious names in Lake County, Indiana; as well as PB Amoco Chemical Company and Amoco Chemicals, Assumed Business Name, Lake County, Indiana, a Delaware Corporation,

Respondents.

On Petition for Writ of Certiorari
to the Indiana Supreme Court

PETITION FOR WRIT OF CERTIORARI

HAROLD ABRAHAMSON
Counsel of Record
KENNETH D. REED, ESQ.
ABRAHAMSON, REED & BILSE
200 Russell Street, Suite 200
Hammond, Indiana 46320
(219) 937-1500

ROBERT BERGER, ESQ., 2701-45
3912 Highway Avenue
Highland, Indiana 46322
(219) 838-7000
Attorney for Hammond City Council

Attorneys for Petitioners

Midwest Law Printing Company/Photex — Chicago — (312) 321-0220

QUESTION PRESENTED FOR REVIEW

Did the Indiana Supreme Court violate the due process and equal protection rights of the petitioners under the following circumstances:

The Indiana Supreme Court decided that the legislature violated the state constitution by enacting a real property assessment statute which applied only to one of Indiana's 92 counties. In the other 91 counties of the state, locally elected assessors determined the value of real estate for property tax purposes. In only Lake County did the state government hire a private firm, at Lake County expense, to make such determinations, completely by-passing the elected assessors.[1] The new private-firm determinations of substantially increased assessed values, coupled with the State's belated and substantially decreased valuations of the four largest Lake County industries, resulted in a huge shift in tax burden and in the loss by many taxpayers, including the named petitioners, of their home equities, since, in most cases the new dual valuations and the timing of those valuations caused their property taxes to dramatically increase, virtually overnight. However, the state Supreme Court, unlike the trial court, refused to grant relief from the constitutional defect and its results, holding that the trial court lacked jurisdiction, asserting that plaintiffs failed to exhaust their administrative remedy—which remedy would involve the administrative decision of thousands of assessment appeals—before the constitutional issue could be addressed in court. Two of the five justices refused to give their opinion(s) on the merits of the state constitutional violation, and two justices stated their opinion that a later, unrelated statute constituted curative legislation. And, the fifth Justice dissented. Hence, the refusal of the state Supreme Court to grant effective relief to taxpayers, under these circumstances, violated their federal rights guaranteed by the due process and equal protection clauses of the U. S. Constitution.

---

[1] Another section of the same state statute granted a state agency, the Department of Local Government Finance, the exclusive authority to assess the value of the real property of Lake County's four largest industries, i.e., the four named respondents.

1. Did the refusal of the state Supreme Court to grant relief to taxpayers, under these circumstances, violate their federal rights under the due process and equal protection clauses of the U. S. Constitution?

2. Did the decision of the Indiana Supreme Court divesting locally elected assessors in Lake County of their authority to assess property violate the Federal Voting Rights Act and the constitutional guarantee of republican government?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE SUPREME COURT OF INDIANA WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED:

In the Supreme Court of Indiana, two proceedings were consolidated for the appeal. The first proceeding was an original action for a writ of mandate or prohibition. In that case, the State of Indiana is the named Petitioner and the Attorney General of Indiana is the Relator. The Superior Court of Lake County and the Honorable Robert Pete, Judge thereof, are the named Respondents. The second proceeding in the Supreme Court of Indiana was a direct appeal from the Superior Court. The appellants were Honorable Joseph E. Kernan[2], then Governor of the State of Indiana, Steve Carter, Attorney General of the State of Indiana, and Beth Henkel, the Indiana Commissioner of the Department of Local Government Finance (formerly Indiana State Board of Tax Commissioners), United States Steel Corporation; Ispat Inland, Inc.; International Steel Group, Inc.; and BP Products North America, Inc., formerly Amoco Oil Company, and using Amoco Oil Company as an assumed business name, a Delaware Corporation. The appellees were as follows: Homeowners Don and Nancy Engel; Margie A. Franta; Mary Jane Grennon; Benjamin W. Hecht; Evelyn H. Reaves; Keith and Danielle Sleight; Sherry L. Williams; Aletta Hicks, voters, taxpayers, citizens and residents of the County of Lake, State of Indiana, and the Miller Citizens Corporation, an Indiana nonprofit corporation. The Common Council of the City of Hammond, Indiana, and the Common Council of the City of East Chicago, Indiana, were appellees and intervening plaintiffs in the trial court, on the side of petitioners. Booker Blumenberg, Jr., the Calumet Township Assessor, was originally named as a defendant but was realigned on his own motion as a plaintiff in the trial court, and was an appellee. The other defendants in the Superior Court who were appellees in the Indiana Supreme Court are: Peggy Holinga-Katona, Treasurer of Lake County, Indiana; Stephen Stiglich, Auditor of Lake County, Indiana; Paul Karras, Assessor of Lake County, Indiana; Lake County Indiana property tax assessment board of appeals; Centhia Vick, Cedar Creek Township Assessor; Martha Wheeler, Center Township Assessor; James Morrow, Eagle Creek Township Assessor; Carl G. Speichert, Hanover Township Assessor; Julia M. Walek, Hobart Township Assessor; John S. Matonovich, North Township Assessor; Randall Guernesy, Ross Township Assessor; Hank Adams, St. John Township Assessor; Rick Niemeyer, West Creek Township Assessor; and John Curley, Winfield Township Assessor.

---

[2] Governor Kernan succeeded Hon. Frank O'Bannon, who passed away in office. Gov. Kernan has since been replaced by the election of Governor Mitchell Daniels.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioners state that Miller Citizens Corporation is an Indiana non-profit corporation and has no parent corporation and that no publicly held corporation holds 10% or more of the "stock", i.e. membership interests, in Miller Citizens Corporation. (In Indiana, non-profit corporations have only "membership" interests; not "stock").

TABLE OF CONTENTS

PAGE

Questions Presented for Review i

List of All Parties to the Proceeding in the Supreme Court of Indiana Whose Judgment is Sought to be Reviewed iii

Rule 29.6 Corporate Disclosure Statement iv

Table of Authorities vii

Opinions Below 1

Jurisdiction 1

Statutory and Constitutional Provisions Involved 1

Statement of the Case 2

Historical Facts 4

Reasons for Granting Writ 11

A. The Indiana Supreme Court's Decision Not To Void the Unconstitutional Result of Special and Local Legislation Codified in Indiana Code Sections 6-1.1-8.5 et seq. and 6-1.1-4-32, Has Resulted In A Violation of Plaintiffs' Right to Equal Protection Of the Law Under the Fourteenth Amendment to The United States Constitution 14

   1. Exhaustion of Administrative Remedies 16

   2. Curative Legislation 17

3. Tardiness 18

B. The Indiana Supreme Court's Decision to Dismiss the Petitioner's Case for Both Being Too Early (Failure To Exhaust Administrative Remedies) And Too Late (Laches), Constitutes A Violation of the Plaintiffs' Right to Due Process of Law Guaranteed by the Fourteenth Amendment to the United States Constitution 22

C. The Indiana Supreme Court's Decision to Allow the State, Through its Department of Local Government Finance, and A Private Contractor, Hired by the State, to Conduct the Lake County Reassessment has Operated to Eradicate the Rights Of Voters in Lake County To Democratically Elect Their Township Assessors Whose Statutory Duty Was to Conduct Such Reassessments 25

D. There Was No Substantial Historical Justification For The 2001 Special Legislation, Under the Ind. Const. Article IV §23; and the 2004 Legislation Did Not Cure The Constitutional Defect, Under Ind. Const. Article IV §22 27

Conclusion 28

TABLE OF AUTHORITIES

PAGE(S)

U. S. Constitution:

U. S. Const., Art. IV, §4 . . . . 2, 25

U. S. Const., Art. VI, cl. 2 . . . . 2, 21

U. S. Const., Amendment XIV 2, 22

Federal Statutes:

28 U.S.C. §1257 1

42 U.S.C. §1971 . . . . 2, 13, 14, 26

Indiana State Constitution:

Ind. Const. Art. IV, § 22 . . . . *passim*

Ind. Const. Art. IV, § 23 . . . . *passim*

Ind. Const. Art. X, §1(a) . . . . *passim*

Indiana State Statutes:

I. C. §§ 6-1.1-8.5-1, et seq. 2, 3, 12, 23

I. C. §6-1.1-8.5-11 . . . . 13, 26

I. C. § 6-1.1-8.5-13 . . . . 13, 18

I. C. §6-1.1-4-32 . . . . 2, 3, 12, 23

I. C. §6-1.1-4-35 . . . . 2, 17, 21

Case Precedents:

Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia,
488 U.S. 336 (1989) 20

Allied Stores of Ohio v. Bowers,
358 U.S. 522 (1959) 19

Bellamy v. Gillis,
722 N.E.2d 905 (Ind.Ct.App.2000) 17

Boehm v. Town of St. John,
675 N.E.2d 8 (Ind.1996) 27

Brinkerhoff-Farris Trust Co. v. Hill,
281 U.S. 673 (1930) 15

Brzonkala v. Virginia Polytechnic Institute and State University,
169 F.3d 820 (4th Cir.1999) 26

Burk v. Bolerjack,
427 N.E.2d 887 (Ind.1981) 21

City of Los Angeles v. David,
358 U.S. 715 (2003) 22, 24

City of South Bend, etc. v. Kimsey,
781 N.E.2d 683 (Ind. 2003) 5, 15

Cumberland Coat Co. v. Board of Revision,
284 U.S. 23 (1931) 19, 21

Elmer Buchta Trucking, Inc. v. Stanley,
744 N.E.2d 939 (Ind. 2001) 21

Hillsborough v. Cromwell,
326 U.S. 620, 623 (1946) 15

Miller v. State of Indiana,
820 N.E.2d 1240 (Ind. 2005) 1

Kelly v. United States,
69 F.3d 1503 (10th Cir.1995) 25

Mathews v. Eldridge,
424 U.S. 319 (1976) 22, 23, 24

Matonovich v. State Bd. Of Tax Comm'rs,
705 N.E.2d 1093 (Ind.Tax Ct. 1999) 5

New Jersey v. United States,
91 F.3d 463 (3rd Cir.1996) 26

New York v. United States,
505 U.S. 144 (1992) 25

Rambo v. Cohen,
587 N.E.2d 140 (Ind.Ct.App.1992) 17

State Board of Tax Commissioners v. Town of St. John, 702 N.E.2d 1034 (Ind.1998), appeal after Remand, 751 N.E.2d 657 (Ind.2001) 4, 11, 12, 27

State v. Sproles,
672 N.E.2d 1353 (Ind. 1996) 16

Texas v. United States,
106 F.3d 661 (5th Cir.1997) 26

Town of St. John v. State Board of Tax Commissioners,
729 N.E.2d 242 (Ind.Tax. Ct. 2000) 5

PETITION FOR A WRIT OF CERTIORARI

Miller Citizens Corporation, Don And Nancy Engel; Margie A. Franta; Mary Jane Grennon; Benjamin W. Hecht; Evelyn H. Reaves; Keith And Danielle Sleight; Sherry L. Williams; Aletta Hicks; Voters, Taxpayers, Citizens And Residents Of The County Of Lake, State Of Indiana, Common Council Of The City Of Hammond, Indiana, respectfully petition for a Writ of Certiorari to review the Judgment(s) of the Supreme Court of Indiana in this case.

OPINIONS BELOW

The Opinion of the Indiana Supreme Court of January 13, 2005 (App. 1 - 36) is reported at 820 N.E.2d 1240. The Order of the Indiana Supreme Court denying rehearing without opinion was entered on March 15, 2005 (App. 37) and is unreported. The Findings, Conclusions and Order of the Superior Court of Lake County (App. 68 - 86) are unreported.

JURISDICTION

The Supreme Court of Indiana entered its Judgment on January 13, 2005, and its Order denying rehearing on March 15, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Pursuant to Rule 14.1(f), citations to the statutes and rules relevant to this case are set out below. The full text for each appears in Appendix 87 - 123.

U. S. Const., Amendment XIV

U. S. Const., Art. IV, § 4

U. S. Const., Art. VI, cl. 2

28 U.S.C. §1257

42 U.S.C. § 1971

Ind. Const., Art. IV, § 22

Ind. Const., Art. IV, § 23

Ind. Const., Art. X, §1(a)

I. C. § 6-1.1-4-32

I. C. § 6-1.1-8.5. et. seq.

I. C. 6-1.1-4-35

STATEMENT OF THE CASE

As set forth in Petitioners' Petition for Rehearing (App. 43 - 67), the decision of the Indiana Supreme Court acknowledged that the statutes (I.C. 6-1.1-4-32 and I.C. 6-1.1-8.5-1, et seq.) were unconstitutional, but refused to set aside the resulting reassessments, in violation of plaintiffs' right to equal protection of the law under the Fourteenth Amendment to the United States Constitution. And, the decision of the Indiana Supreme Court to dismiss the case for lack of jurisdiction violates the plaintiffs' right to due process of law guaranteed by the Fourteenth Amendment of the United States Constitution. The unconstitutional statutes and the decision of the Indiana Supreme Court also eliminated the rights of voters in Lake County, Indiana, in violation of 42 U.S.C. § 1971.

In the Fall of 2003, Cole Layer Trumble (CLT), the private contractor for the Indiana Department of Local Government Finance (DLGF) formerly State Board of Tax

Commissioners (State Board) reassessed all real estate in Lake County, except the properties of the "Big Four", i.e., four largest industries in the County, which were reassessed, in-house, by the DLGF in late February, 2004. Well after virtually all other taxpayers values were increased by CLT, the Big Four values were reduced by 52%. This huge reduction was reported after the time for homeowners to appeal their earlier CLT reassessments had expired. The impact on those CLT valuations, by reason of the huge reductions in Big Four values, was never taken into account when taxes were computed, invoiced and impressed as liens on all property owners/taxpayers in Lake County, except the Big Four.

The Miller Citizens Corporation ("MCC") and several resident homeowners and taxpayers of the Miller section of the City of Gary, ("City"), Petitioners, filed their Complaint for Declaratory Judgment and Emergency Injunctive Relief, and, on the same day, MCC filed their Verified Application for Preliminary Injunction.

On May 5, 2004, the Court conducted a hearing on the Application for Declaratory Judgment and Preliminary Injunction; all without objection from any defendant/respondent; none of whom, including the Attorney General, asked for more time to prepare pleadings, motions, or evidence. The Attorney General filed and presented a Motion to Dismiss asserting absence of subject matter jurisdiction. This Motion was denied by the trial court. (App. 73). Petitioners' documentary evidence was admitted, without objection. All parties rested. All parties appeared, except Ispat-Inland, Inc. All parties were heard. The Attorney General did not offer any evidence.

On May 7, 2004, the Trial Court made and entered its Special Findings of Fact, Conclusions of Law thereon, and Judgment and Decree declaring I.C. §6-1.1-4-32 and I.C. §6-1.1-8.5-1, et seq. unconstitutional, and enjoining the defendant Lake County Treasurer from sending out tax bills for any taxes based upon the reassessments performed by CLT, as private state-employed contractors of the DLGF, (a department of the State's Executive Branch), as impacted by the later reassessments of the Big Four performed in-house by the DLGF. (It must be noted that the original tax bills for 2002 payable 2003 had much earlier been delivered to taxpayers, and their mortgagee banks, in the summer of 2003, with instructions to pay 70% and hold back 30%, until further notice). The Trial Court's Order did not enjoin collection of the remaining 30% needed to finance government operations.

The Attorney General initiated an Original Action in the Indiana Supreme Court, and also filed a Notice of Appeal, along with a Motion for Stay. The Indiana Supreme Court entered its Order of May 27, 2004 (App. 38 - 40) staying the injunction, and allowing the "reconciled" and elevated tax bills to be sent out.

Historical Facts

The Indiana Supreme Court's December 4, 1998, decision and opinion in *State Board of Tax Commissioners vs. Town of St. John*, 702 N.E.2d 1034 (Ind., 1998); appeal after remand, 751 N.E.2d 657 (Ind.2001) incorporates a significant statement of the historical facts leading to the Court's decision. The Court decided that the State Tax Board's (now DLGF) methodology and manuals for assessing real estate in the entire state violated Ind. Const. Art. X, § 1(a), which requires the General Assembly to provide, by law, for uniform and equal rates of property assessment and taxation, based on just valuations. This decision, which mandated state-wide reassessments, ultimately produced the unconstitutional statutes, because the Indiana State Board of Tax Commissioners declined to carry out either the Supreme Court mandate, or the ensuing orders of the Indiana Tax Court to devise a way to achieve fair market valuations. Following that 1998 decision, both the Indiana Supreme Court and the Indiana Tax Court took the following further action:

(a) On February 15, 1999, the Indiana Tax Court, in *Matonovich v. State Bd. Of Tax Comm'rs,* 705 N.E.2d 1093 (Ind.Tax Ct. 1999), rejected the State Tax Board's proposal to reassess Lake County properties in-house, while having the rest of the State's property reassessed by elected County and Township assessors, reasoning that the State Tax Board did not have the authority to conduct, or to contract someone else to conduct, the Lake County Reassessment. *Matonovich, supra.*

(b) On May 31, 2000, the Indiana Tax Court, scolded the State Board for inaction, and held that it was appropriate to establish a date certain (June 1, 2001) for the Tax Board's adoption and implementation of new regulations; consistent with the Supreme Court's 1998 decision, and that it was not necessary to appoint an independent commissioner to adopt the new regulations. *Town of St. John v. State Board of Tax Commissioners,* 729 N.E.2d 242 (Ind.Tax. Ct. 2000)

(c) On May 3, 2001, the Legislature passed I.C. §6-1.1-4-32 and 6-1.1-8.5-1, et seq. The special and local application of these statutes is based solely on population parameters, applicable only to Lake County, Indiana, and the statutes provide for reassessment in-house by the DLGF as to the four largest industries in the County, (The Big Four), and by CLT as a contractor of the DLGF as to all other property owners and their properties in Lake County.

(d) On January 15, 2003, the Indiana Supreme Court decided the unrelated, but applicable, case of *City of South Bend, etc. vs. Kimsey,* 781 N.E.2d 683 (Ind. 2003) ("*Kimsey*"), which held that an annexation statute which, by population parameters, applied only to St. Joseph County, was violative of § 23 of Art. IV of the Indiana Constitution, mandating that all laws be general in application.

In the meanwhile, based upon the subject two population based statutes growing out of the 2001 Legislative Session, the private reassessment processes were underway in Lake County and continued, in spite of the *Kimsey* decision. The DLGF, through its private contractor, Cole Layer Trumble (CLT), had caused all the other properties in Lake County to be reassessed in the fall of 2003. However, the Department of Local Government Finance did not reassess the property of the three steel mills and the refinery ("Big Four" or "Class III" trial defendants), until February of 2004. The local elected assessors in Lake County were completely bypassed, whereas the reassessments in all other 91 Indiana Counties were performed by the local elected assessors.

The net result of the dual and uncoordinated reassessments, the end products of which are inextricably interrelated, and must necessarily be considered together, is that the total assessed value of the three steel mills and refinery, as determined by the Department of Local Government Finance, was belatedly diminished from $714,732,365 to $328,051,220; an overall reduction of 52%. The earlier assessments of the vast majority of all other properties in Lake County, assessed by CLT, under contract with the Department of Local Government Finance, had earlier been increased rather substantially, without CLT having taken into account the impact of the late-falling Big Four reassessments by the DLGF. The budget levies either remained the same, or increased during this period of time. Hence, a significant portion of the tax burden shifted, *ex post facto*, dramatically from the steel mills and refinery to the great majority of all other taxpayers of Lake County, Indiana. Thousands of taxpayers had originally appealed the CLT reassessment of their properties to the Division of Tax Review. Many more thousands did not appeal because they had no way of anticipating the shift in the tax burden, and the time for appeal of their CLT assessments had expired before the DLGF completed its devaluation reassessment of the Big Four.[3] The effect of the belated and uncoordinated DLGF/Big Four reassessments was to shift the historical tax burden from the Big Four onto other business and residential owners, overnight.

Given the late February, 2004 Big Four reassessments, the newspapers published a preview of coming attractions, indicating that the amended tax bills, in many thousands of cases, would necessarily be several times larger than any tax bills previously charged against the subject properties.

Confronted with the emergency of that prospect, the MCC and several of its members who are property owners and taxpayers in Miller section of Gary, (Petitioners), brought the underlying action, and were joined in that action by intervenors Common Council of the City of Hammond, Indiana, and the Common Council of the City of East Chicago, Indiana. On May 5, 2004, the cause was submitted for hearing on the Application for Declaratory Judgment, and for hearing on Plaintiffs' Application for Preliminary Injunction. All evidence offered was heard by the court. Judgment was entered May 7, 2004, declaring the Two Statutes unconstitutional, and prohibiting tax billings on the illegal reassessment; but not the billing of the original remaining 30% balance. No defendant, including the Attorney General, offered any evidence.

---

[3] The CLT reassessments occurred in the Fall of 2003. The DLGF reassessments were not rendered until the end of February, 2004.

The Indiana Attorney General filed an Original Action seeking alternative Writs of Prohibition and Mandate, and the Respondent Court and Judge filed a Response, as did the Interested Parties, who are your Petitioners herein. (Plaintiffs-Petitioners below) In addition, the Attorney General, later joined by the other parties defendant, filed a Notice of Appeal in the trial court.

The facts as specially found by Judge Robert Pete in the Superior Court of Lake County, Indiana are unchallenged and uncontradicted in the Record of Proceedings herein, and include the following:

" * * * *

> The primary function of the individuals elected by and answerable to the plaintiffs and other Lake County electorates as their County and/or Township Assessor(s), is to assess Real Property for reassessment and taxation purposes in the State of Indiana. (See I.C. 6-1.1-4 et seq.)
>
> I.C. 6-1.1-4-32 et seq. interferes with the rights of Taxpaying Plaintiffs to pay the actual costs incurred by their local Assessors in the performance of their duties incident to the assessment of Real Estate in Lake County.
>
> As Lake County, Indiana is the only County in the State of Indiana which will ever be affected by the Act, it constitutes "Special Legislation" in contravention of Article IV, §§ 22 and 23 of the Indiana Constitution.
>
> The direct result of the enactment by the General Assembly of I.C. 6-1.1-4-32 and I.C. 6-1.1-8.5, et seq., and the implementation of said Statutes by the appointees of the Executive Department, and their selected private contractors, including Cole Layer Trumble, is that the assessed value of the lands and improvements of The Big Four have plummeted to historically low levels, and simultaneously, the assessed values of

virtually all other properties in the County of Lake and all of the Townships therein have increased geometrically. The proximate result of that event is that, while the budgets of the various governmental bodies funded through real estate taxes may have stayed approximately the same (tax levies), the volume of actual taxes to be used to fund those budgets have shifted dramatically from The Big Four to plaintiffs, including virtually all other taxpayers in Lake County, Indiana, and the Townships therein.

The real and practical effect of the enactment and implementation of the current general reassessment, pursuant to Indiana Code 6-1.1-4-32 and 6-1.1-8.5 – 1 through 13, inclusive, is catastrophic in proportions. Ordinary people are subject to being ruined as to their finances.

As to the nominal plaintiffs an emergency exists for legal and equitable judicial intervention in this case, for the reason(s) that the plaintiff parties are in imminent danger of sustaining irreparable harm for which they have no adequate remedy at law, in this that:

1. As a proximate result of the effects of the subject reassessment, and upon issuance by the Lake County Treasurer of the "new" tax bills for (a) the balance of the second half of 2002 pay 2003; and (b) the first half of 2003 pay 2004 real estate taxes, it will:

(a) be impossible for many, and extremely difficult for others, to pay the tax bills, this incurring the risk and probability of delinquency, including the incurring of penalties, interest and charges, and the spectre of tax sale under I.C. 6-1.1-24;

(b) Mortgagees holding real estate tax escrow agreements will be insisting upon their right to demand additions to the real estate tax escrow account, both *in praesenti* and *in futuro*.

(c) Inasmuch as the higher tax burdens will necessarily reduce the fair market value of mortgaged properties, the mortgagees may well declare themselves insecure, under common mortgage terms, and declare a default, accelerating the due date term of the mortgage(s).

(d) These are all matters *ex contractu* to which the Court has no jurisdiction to interdict or remedy, as between the borrowers and the mortgages. Hence, the statutes must be ruled upon immediately.

2. The taxpayers, except The Big Four, are sustaining immediate impairment of cash flow and savings, coupled with loss of equity in their property; all in contravention of Indiana Constitution, Art. I, Sec. 21.

3. The Emergency Is Such That (A) the Treasurer is on the verge of issuing the new tax bills; (B) there are no disputed facts that the reassessments took place, and the devastating results thereof (except for the big four); and (C) an immediately judicial reading, in *Pari Materia*, of (I) I.C. 6-1.1-4-32 and I.C. 6-1.18.5-1 to 13; coupled with (II) Ind. Const., Art. I, §§ 21 and 2; Art. IV, §§ 22 and 2; and Art. X, § 1; and (III) the Supreme court analysis in *City of South Bend vs. Kimsey*; and the said statutes, and resulting reassessments are void, and that impending tax bills are therefore unjustified and illegal.

4. Finally, the Court has a duty to act under the Declaratory Judgment Act, invoked by plaintiffs' Complaint. No party should be allowed to act in any way that would interfere with the opportunity of the Court to exercise that solemn jurisdiction. Hence, a status quo order must necessarily be entered herein." (App. 68 – 86)

REASONS FOR GRANTING THE WRIT

A Writ should be granted because singling out one county for special tax procedures by the legislative and executive departments of state government, violates the equal protection clause, and the judicial department denying relief both because of failure to exhaust administrative remedies and because of laches violates due process, and depriving only one county of assessments by locally elected assessors violates the federal voting rights act. Historically, a substantial portion of the funding of the budgets of local units of government in the State of Indiana has been accomplished primarily through the imposition of taxes on non-exempt real property in that State's counties, townships, cities and towns. The property tax is a tax *ad valorem*, which is supposed to be imposed equally and uniformly under Art. X, § 1(a) of the Constitution of the State of Indiana. The problem is to determine fairly, equally and uniformly what proportion of the tax burden should be paid by each property owner based upon the relative values of each owner's real property. It is the statutory perversion of this process by the legislative and executive branches of Indiana State Government, and methodology of their reassessment scheme targeting Lake County, and the refusal of the highest judicial authority to "right the wrong",which gives rise to the controversy at hand.

On December 4, 1998, the Supreme Court of Indiana sided with a group of St. John property owners, and held that the method of assessment of real property throughout the State was unconstitutional as violative of Ind. Const. Art. X, § 1(a), inasmuch as the manuals and methodologies prescribed by the Executive Department's State Board of Tax Commissioners were not rational and did not produce values which were fair, equal and uniform, but rather produced values which bore no relationship to proportional fair market values. *State Board of Tax Commissioners vs. Town of St. John,* 702 N.E.2d 1034 (Ind., 1998); appeal after remand, 751 N.E.2d 657 (Ind.2001). The Indiana Supreme Court required that the State Tax Board get busy and devise a methodology to achieve compliance with Art. X, § 1(a) of the Indiana Constitution. The Court opined that, while it could not order a fair market value reassessment throughout the State, it really could see no other way to achieve equality and uniformity. The State Tax Board thereupon proposed that it would reassess all property in Lake County, Indiana, which is where St. John Township is located. In the meanwhile, all other property in the State would be reassessed by constitutional and duly elected assessors. That proposal was objected to by Lake County's elected township assessors, whose sole job it was to perform those assessments. (*Matonovich, supra*) The Indiana Tax Court and Supreme Court agreed that the State Tax Board had no such authority. The State Tax Board accomplished very little to implement the December 4, 1998, Supreme Court decision. The St. John residents filed a further action to compel the State Tax Board to act. (*Town of St. John, supra*). The Indiana Tax Court agreed, and set a June 1, 2001, deadline for the State Tax Board to train local assessors and produce manuals and methodologies for those assessors to use in reassessing all of the properties in the State of Indiana. There is no evidence that the State Tax Board did anything, except to successfully lobby legislation in 2001, which produced I. C. § 6-1.1-4-32, (which allowed the State Tax Board to hire a private contractor to perform all reassessments in Lake County, Indiana), and I.C. § 6-1.1-8.5-1, et seq., (which reserved unto the State Tax Board itself the exclusive right to reassess the four major industries in Lake County, Indiana). Thus, by this legislative enactment, the State Tax Board got its original wish to reassess Lake County property, and was off the hook on the Tax Court's deadline to act, and the elected township assessors in Lake County, Indiana, were essentially out of a job. The peoples' Constitutional right to vote and elect assessors was rendered meaningless, in violation of 42 U.S.C. 1971.

The CLT appraisals were concluded in the Fall of the year 2003. In the meanwhile, the State Tax Board (later DLGF) conducted an in-house reassessment of the Big Four, under "special rules". (I.C. §6-1.1-8.5-13) However, not until the end of February, 2004, (App. 129 - 137) did the State Tax Board conclude its work of reassessing the Big Four industries, which work product resulted in a combined reduction across the Board of 52% of the assessed value of those four gigantic industries. This dramatic decrease instantaneously cast a huge tax burden on virtually all of the other property owners in Lake County, Indiana, virtually overnight. However, notice of this dramatic action by the State Tax Board was furnished only to a few County officials. Even though a taxpayer is granted the right to appeal, the statute makes no provision for public notice and none was given, contrary to the requirements of the special statute. I.C. §6-1.1-8.5-11(a). Moreover, the reassessment of the Big Four industries was done according to so called "special rules", which obviously differ from the rules by which all other properties were reassessed in Lake County (and the State), thus simply reviving Ind. Const. Art. X, § 1(a) issues of equality and uniformity of assessments supposedly resolved by the Indiana Supreme Court in the original 1998 St. John decision. (For "Special Rules " provisions, see I.C. §6-1.1-8.5-13). However, the public gradually became aware that their impending tax bills were going to be geometrically increased immediately. Hence, on April 29, 2004, the petitioners, as property owners in Lake County, Indiana, brought their action in State Court seeking a Declaratory Judgment that the special statutes allowing for the private reassessment of property in Lake County, Indiana, as distinguished from the public reassessments performed in all other counties of the State, was special and local legislation violative of Art. IV, §§ 22 and 23 of the Indiana Constitution. The taxpayers won. The State Attorney General, and Governor, and DLGF all sought Original Actions for Mandate and Prohibition from the Indiana Supreme Court, as well as perfecting a direct appeal to the Indiana State Supreme Court. However, the Supreme Court lifted the injunction and allowed the grossly elevated tax bills to be sent out. The Supreme Court ordered an expedited briefing schedule and held oral arguments in the Supreme Court on June 23, 2004. The Supreme Court entered its decision reversing the trial court on January 13, 2005. The petitioners sought rehearing in the Supreme Court, and raised issues involving the violation of their federally protected constitutional rights under the Fifth and Fourteenth Amendments to the U. S. Constitution, as well as 42 U.S.C. §1971, all such violations being predicated upon the Supreme Court's ruling of January 13, 2005. That Petition for Rehearing was denied on March 15, 2005, and this application for Writ of Certiorari ensues.

A. THE INDIANA SUPREME COURT'S DECISION NOT TO VOID THE UNCONSTITUTIONAL RESULT OF SPECIAL AND LOCAL LEGISLATION CODIFIED IN INDIANA CODE SECTIONS 6-1.1-8.5 ET SEQ. AND 6-1.1-4-32, HAS RESULTED IN A VIOLATION OF PLAINTIFFS' RIGHT TO EQUAL PROTECTION OF THE LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The equal protection clause of the Fourteenth amendment provides: "No State shall *** deny to any person within its jurisdiction the equal protection of the laws". The United States Supreme Court has long recognized that the "equal protection" clause of the Fourteenth

Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." *Hillsborough v. Cromwell*, 326 U.S.620, 623 (1946).

The Indiana Supreme Court's decision not to void the unconstitutional selective reassessment is erroneous and has resulted in a violation of the petitioners' equal protected rights. These federal issues were not addressed prior to the Petition for Rehearing in the Supreme Court because they arose only as a result of that court's opinion and decision of January 13, 2005. See *Brinkerhoff-Farris Trust Co. v. Hill*, 281 U.S. 673, 677-78 (1930). The petitioners relied on the State's judicial department to enforce the provisions of the Indiana Constitution which prohibit special legislation. Indiana Constitution Art. IV §§ 22 and 23. The Supreme Court's decision acknowledges Indiana's Constitutional ban on special legislation applying only to one certain county, consistent with existing case law in the State. See *City of South Bend v. Kimsey*, 781 N.E.2d 683 (Ind. 2003), and expressed in Ind. Const., Art. IV, §§ 22 and 23. However, the Court also ruled that the selective reassessment of Lake County real property, and the shift in tax imposition produced under that special legislation were not void, but rather, would be allowed to stand. Petitioners believe that this determination is erroneous, and, violates petitioners' rights to equal protection.

The Indiana Supreme Court offered three (3) basic grounds or refusing to "right the wrongs" perpetrated by the Indiana State Legislative Branch, in enacting the special legislation, and perpetrated by the Executive Department (DLGF) in implementing that legislation (with no effort to coordinate the two (2) distinct reassessments) aimed at all other tax payers, to-wit:

(a) Petitioners' failure to "exhaust administrative remedies";

(b) The alleged "curative" legislation of 2004;

(c) Petitioners' "tardiness" in challenging the unconstitutional special legislation.

Petitioners respectfully disagree, for the following reasons:

1.

Exhaustion of Administrative Remedies

The decision from which the petitioners seek relief holds that the petitioners failed to first exhaust their administrative remedies before proceeding to invoke the jurisdiction of the judicial department. (App. 2, 6 and 7). The Court cited *State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996), and held that, regardless of the absolute futility of attempting to have a purely constitutional issue presented to, and promptly resolved by a State Board, the petitioners were nonetheless required to present those constitutional arguments first to the State Board. This rule was applied regardless of the acknowledged substantial delay in getting the constitutional issue ultimately to the Supreme Court, and the ludicrous need for the individual initiation of tens of thousands of separate and very expensive appeals required, and regardless of the fact that thousands of taxpayers did not appeal their fall 2003 CLT reassessments, because they could not know, until the February, 2004 impact of the DLGF Big Four devaluation reassessments were publicized, that the resulting shift in tax burden rendered their properties near worthless. The Board of Review is an executive body, which has neither the jurisdiction nor the authority to decide an issue of the constitutionality of state statutes. It is fundamentally unfair for the State to insist that its citizens and taxpayers exhaust administrative remedies; without first providing administrative remedies that are fair and effective. It is a denial of due process for the State to insist upon exhaustion where the process provided, and required, cannot, for the reasons previously stated, produce the justice sought. (*Bellamy v. Gillis*, 722 N.E.2d 905 (Ind.Ct.App.2000); *Rambo v. Cohen*, 587 N.E.2d 140, 144 (Ind.Ct.App. 1992).

2.

Curative Legislation

In its January 13, 2005 opinion, (App. 12) the Court finds that the statutes are special laws prohibited by § 22 (eleventh cause) of Art. IV of the Indiana Constitution, concerning assessment of property. However, the Court says that the fact the enabling legislation is unconstitutional doesn't invalidate the reassessments for the reasons expressed in Opinion part III. (The so-called 2004 Curative Legislation). It is respectfully submitted that the Indiana Supreme Court's ruling that the Art. IV, § 22 defect in the 2001 Lake County reassessment statutes was "cured" by the enactment of a 2004 reassessment statute (I.C. §6-1.1-4-35) is erroneous, and violates petitioners' rights guaranteed by the U. S. Constitution. The 2004 statute does nothing to cure the horrendous consequences of the 2003 reassessment for tax year 2002, conducted pursuant to the 2001 reassessment statutes or for any following years, for the following reasons:

1. Sec. 35(a) of the 2004 statute expressly excludes Lake County from the Statute's application, and, contrary to the Court's rationale, this does not violate Ind. Const. Art. IV, § 22. It is, in essence, "non-legislation", as to Lake County. Moreover, "two wrongs don't make a right", and one piece of constitutional, or unconstitutional, legislation cannot cure another earlier piece of unconstitutional legislation. The Court ruled that the 2001 statutes did not violate Ind. Const. Art. IV, § 23, because of what the Court

decided were terrible assessment problems unique to Lake County, justifying a law that was not general. That same logic would necessarily apply to § 35(a) of the 2004 Act.

2. The provisions of the 2001 unconstitutional statutes were mandatory, whereas the provisions of the 2004 "curative" statutes are discretionary.

3. The 2004 statute does not indicate a legislative intent that it be "curative".

4. Petitioners adopt Justice Rucker's view on the issue of the application of Art. IV, §§ 22 and 23, as expressed in the Justice's dissenting opinion. The Act does nothing to "cure" the "special rules" defect in the 2001 legislation pertaining to the Big Four. (I.C. §6-1.1-8.5-13).

3.

Tardiness (Laches)

The Indiana Supreme Court ruled that petitioners should have raised the Constitutional issues the minute the Legislature enacted the special legislation. That is unrealistic. The homeowners in Gary, Indiana, cannot be expected to know about the constitutional prohibition against special legislation, and that the two (2) subject sections of the enactment were special legislation, and that they were going to be injured by the unconstitutional DLGF implementation of those statutes? The Indiana Supreme Court cannot expect lay persons to read every statute as it is handed down, and to comprehend their Constitutional frailties when it took the Indiana Supreme Court 34 pages to explain; without even then achieving unanimous accord among the learned Justices.

Petitioners do not believe that there is a statute of limitations on Constitutional safeguards, or that principles of estoppel apply.

The biggest disappointment is that the third and last Department of State Government, the Judicial Department, headed by the Supreme Court, allowed this tragic farce to succeed. The answer may, or may not, be found in the following Supreme Court observations scattered throughout its Opinion.

(a) "The State points out that if the reassessment is accurate, the increase in taxes compared to prior years merely corrects an underpayment these residential properties have enjoyed in the past." (App. 4 - 5)

(b) "We see no basis to trigger the disruption that would be generated by invalidation of the entire county's property tax base where there is no showing that any identifiable property has been incorrectly assessed." (App. 18, 19)

(c) "A system that channels tax protests through an orderly system of administrative and Tax Court review without risking *'abrupt stoppages in tax collections'* by order of any one of the state's hundreds of trial courts protects the interests of both taxpayers and of all of us who rely on government services." (App. 28) (Emphasis Supplied)

Discriminatory treatment can inhere not only in disparate taxation rates, but also in disparate methods of assessment. The Supreme Court of the United States has held that disparate taxation is "internal and systematic", and thus in violation of the Fourteenth Amendment, when clearly disparate assessments are "made pursuant to a deliberately adopted system" and result not from possible errors in judgment, but from the system itself. *Cumberland Coat Co. v. Board of Revision*, 284 U.S. 23, 25 (1931). The command of the Equal Protection Clause is that those who are similarly situated be treated similarly. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526-527 (1959).

The Equal Protection Clause tolerates occasional errors of state law or mistake in judgment when valuing property for tax purposes. *Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia*, 488 U.S. 336,343 (1989). The States may also divide different kinds of property into classes and assign to each class a different tax burden so long as the selection or classification is neither arbitrary nor capricious and rests upon some reasonable consideration of difference or policy. *Id.* at 344. In this instance, there is no valid reason or justification for not relieving Lake County property owners from the consequences of an unconstitutional reassessment.

The Indiana Supreme Court stated, "without a showing that the substantive results reached by the reassessment are incorrect, we will not indulge the assumption that local officials would arrive at different results[4]." (App. 16). The problem is not so much the efficacy of the CLT assessments, when made in the Fall of 2003, and capable of challenge, but rather in the impact on those reassessments of the belated Big Four reassessment results. Indiana State law draws no class or county-by-county distinction among property for purposes of appraisal or assessment. As a matter of law, the Indiana Constitution mandates a system of uniformity and equality. See Ind. Const., Art. X §1(a). Further, this is not a case involving any question of the exercise of judgment by an assessor (democratically elected, appointed, or contracted), or any question of a good faith mistake in a particular valuation decision. The petitioners are not suggesting that any Court set itself up as a Board of Review to second-guess the judgment of assessors.

Such unwarranted treatment of the State Constitutional protections undermines government by consent, which is the essence of the guarantee of Republican government. This case mainly turns on legal principles. There is no question that the challenged assessments were made pursuant to a deliberately adopted system. As this Court stated in *Cumberland Coat Co. v. Board of Revision*, 284 U.S. 23, 25 (1931), "this case is not one of mere errors in judgment following a proper method, but one where the challenged discrimination resulted from a plan of assessment which was none the less systematic and intentional because of belief in its validity".

---

[4] This finding is addressed in detail in Section "C" of this Petition.

Further, the Supreme Court of Indiana in holding that the allegedly "curative" enactment solved the problem, seems to have eschewed a key restriction on the judicial role that it has in the past repeatedly applied: Where the language of a statute (in this case I.C. §6-1.1-4-35(a) is plain and unambiguous, and its meaning clear and unmistakable, there is no room for judicial construction, and the courts are not permitted to search for its meaning beyond the statute itself. *Elmer Buchta Trucking, Inc. v. Stanley*, 744 N.E.2d 939, 942 (Ind. 2001). Indeed, as the Indiana Supreme Court has noted, it is not the prerogative of the Court to vary from the plain meaning of the unambiguous terms employed by the General Assembly. *Burk v. Bolerjack*, 427 N.E.2d 887, 890 (Ind. 1981).

The Indiana Supreme Court's majority decision not to void the Lake County reassessment for the tax year 2002, and following, and denial of the Petition for Rehearing is clearly incorrect because the petitioners possess, and rely upon for their protection, federally protected rights that are not dependent on the varying and shifting interpretations of state constitutional law. Supremacy principles prevent a state court from employing state constitutional provisions to defeat federal constitutional rights to equal protection. (U. S. Const., Art. VI cl. 2). The disparity did not result from an error in judgment or the exercise of discretion; it resulted from a discriminatory plan thereby violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Had the Indiana Supreme Court voided the 2002 reassessment of Lake County real property, petitioners' rights under the Fourteenth Amendment would be restored and preserved.

B. THE INDIANA SUPREME COURT'S DECISION TO DISMISS THE PETITIONER'S CASE FOR BOTH BEING TOO EARLY (FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES) AND TOO LATE (LACHES) CONSTITUTES A VIOLATION OF THE PLAINTIFF'S RIGHT TO DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Fourteenth Amendment to the U. S. Const., at §1, guarantees all U.S. citizens the due process, and the equal protection, of law.

U.S. Const. Amend. XIV, § 1.

In the 2003 case of *City of Los Angeles v. David*, 358 U.S. 715, 716-717, the United States Supreme Court, reaffirmed the test for determining whether the safeguards of procedural due process have been met, by reiterating its three (3) pronged test first formulated in 1976, stating as follows:

> "In Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Court set forth three factors that normally determine whether an individual has received the "process" that the Constitution finds "due": "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or

> substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."
>
> "By weighing these concerns, courts can determine whether a State has met the "fundamental requirement of due process"—"the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " Id., at 333, 96 S.Ct. 893."

The first prong of the test used to determine whether the safeguards of procedural due process have been met, announced by the United States Supreme Court, in *Mathews v. Eldridge*, is to determine the nature and importance of "the private interest that will be affected by the official action." 424 U.S. 319, 335, 96 (1976). The private interest is the interest of virtually every taxpayer owning property in Lake County, Indiana, (except, of course, the Big Four) who has an obvious private financial interest in the constitutionality of the process used in assessing the value of their property for tax purposes.

The second prong of the test is to determine "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Id.* The Indiana Supreme Court has held that the petitioners must avail themselves of an administrative process before a Board that was without jurisdiction or authority to decide the ultimate issue presented: the constitutionality of I.C. §§ 6-1.1-4-32 and 6-1.1-8.5-1 et seq. The appeal of any State Board decision to the Indiana Tax Court, would not have provided the expediency of justice necessary to prevent the evil resulting from the unconstitutional statutes. Even the State Tax Court's ultimate decision is not final. The mailing of the elevated second half 2002, pay 2003 tax bills, and their receipt by mortgagees and property owners, has started the downward spiral of increased mortgage escrow payments, inappropriately large direct tax payments, dramatically reduced home values, and general panic throughout most of Lake County.

Lastly, the third prong of the test is to weigh "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* The additional safeguard would have provided no relief, due to its lack of expediency, to the petitioners. And, neither the state nor local government benefits from the delay in reaching a decision on the constitutional question. Only the Big Four benefit.

Therefore, weighing these concerns, the State has not met the "fundamental requirement of due process"—"the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *City of Los Angeles v. David*, 538 U.S. 715, 716-717 (2003) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976))(emphasis added).

C. THE INDIANA SUPREME COURT'S DECISION TO ALLOW THE STATE, THROUGH ITS DEPARTMENT OF LOCAL GOVERNMENT FINANCE, AND A PRIVATE CONTRACTOR, HIRED BY THE STATE TO CONDUCT THE LAKE COUNTY REASSESSMENT HAS OPERATED TO ERADICATE THE RIGHTS OF VOTERS IN LAKE COUNTY TO DEMOCRATICALLY ELECT THEIR TOWNSHIP ASSESSOR WHOSE STATUTORY DUTY WAS TO CONDUCT SUCH REASSESSMENTS.

The Court's opinion and decision violate the Republican Guarantee Clause of Art. IV of the United States Constitution by not allowing Lake County to be assessed by their publicly elected assessors. Art. IV § 4 of the U.S. Constitution provides that "The United States shall guarantee to every State in the Union a Republican form of government". Although claims premised on the Republican Guarantee Clause have in the past been viewed as nonjusticable in most instances, Justice O'Conner noted in *New York v. United States* "that perhaps not all claims under the Guarantee Clause present nonjusticable political questions." 505 U.S. 144, 183 (1992). Indeed, this case presents circumstances where the Republican Guarantee claim is viable. The essence of the Republican Guarantee is the right of a State's citizen's to "structure their government as they see fit". *Kelly v. United States*, 69 F.3d 1503 (10th Cir. 1995). In *New York*, the Court dismissed the Guarantee Clause claim only because the statute in that case did not "pose any realistic risk of altering the form or method of functioning of New York's government." 505 U.S. at 186. But here, the Indiana Supreme Court's decision has already done just that. Lake County's assessments were not performed by their publicly elected assessors, a fact unique to Lake County. Many courts have already recognized that this clause is viable for claims of structural constitutional violations. See *Texas v. United States*, 106 F.3d 661, 667 (5th Cir. 1997); *New Jersey v. United States*, 91 F3d 463, 468-69 (3rd Cir. 1996); *Brzonkala v. Virginia Polytechnic Institute and State University*, 169 F.3d 820, 895 (4th Cir. 1999). The decision also violates the Federal Voting Rights Act. (42 U.S.C. §1971)

The resulting harms have to do entirely with the timing of the reassessments, and the dual uncoordinated personnel conducting them. No one outside of the DLGF could foresee that these reassessments would lower The Big Four assessments by 52%, at the end of February, 2004. And, the contemplated notice to taxpayers was never given. (I.C. §6-1.1-8.5-11) Not until this point in time could it possibly be known by the rest of the Lake County taxpayers (primarily in the populous northern industrial parts of Lake County) that their tax burdens would increase geometrically in order to offset the loss of 52% of the taxes which quite suddenly would no longer be paid by The Big Four. The petitioners acted very promptly and filed suit on April 29, 2004. It was too late for them to appeal the reassessments by CLT, which was a condition precedent to proceeding to The Board of Review. They were effectively "mouse-trapped". Reassessment by local assessors would have precluded lack of cooprdination.

Finally, and perhaps most ironically and tragically, the minute the DLGF made its Final Determination(s), the vast majority of the CLT reassessments were rendered obsolete and probably illegal and unconstitutional under Ind. Const. Art. X, §1(a). The original CLT assessments necessarily took into account the then existing tax burden on a particular property, at the time the fair market valuations were performed; and not the geometric increase in those tax burdens resulting from the dramatic decrease in the belated reassessments of The Big Four. The Cole-

Layer-Trumble reassessments, based on the tax burden in the fall of 2003, could not possibly continue to be accurate under the huge tax burden shift which occurred at the end of February, 2004. But, by late February, 2004, those reassessments were beyond challenge.

D. THERE WAS NO SUBSTANTIAL HISTORICAL JUSTIFICATION FOR THE 2001 SPECIAL LEGISLATION, UNDER THE IND. CONST. ARTICLE IV §23; AND THE 2004 LEGISLATION DID NOT CURE THE CONSTITUTIONAL DEFECT, UNDER IND. CONST. ARTICLE IV §22.

In 1996, Justice Dickson speaking for the Indiana Supreme Court, held that the Tax Court lacked jurisdiction to mandate a statewide reassessment based on fair market values, even though the then current system for determining "true tax value" did not meet the requirements of Ind. Const. Art. X, § 1(a). *Boehm vs. Town of St. John*, 675 N.E.2d 8 (Ind. 1996).

On December 4, 1998, the Indiana Supreme Court held that the entire State had to be reassessed by a method which would produce results consistent with Ind. Const. Art. X, § 1(a); even if that meant resorting to fair market value, in use, standards. *State Board of Tax Comm'rs. vs. Town of St. John*, 702 N.E.2d 1634 (Ind. 1998).

In the case at bar, the Indiana Supreme Court indicated, without substantial evidentiary basis, that there was some Ind. Const. Art. IV, §23 justification for the Special Lake County legislation and, by implication, justification for the State Tax Board's quest to internally reassess Lake County, by reason of: (1) a need to get even for years of underassessment of everyone except the Big Four (App. 4 - 5); (2) a "troubled history of property taxation" (App. 10); (3) a "long and tortured history of property taxation" (App.

13); (4) findings of the State Tax Board concerning widespread underassessment (App. 13); (5) unique circumstances created by uneven assessment practices (App. 14); (6) long history of systematic underassessment (App. 15, 17); and (7) long and troubled (or tortured) Lake County assessment history (App. 13, 17).

There is no substantial evidence in the Record to support those conclusions. In the 1998 St. John case, the Supreme Court held that property assessment inequalities were a statewide problem; not a Lake County problem.

CONCLUSION

Petitioners pray that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

HAROLD ABRAHAMSON
Counsel of Record
KENNETH D. REED, ESQ.
ABRAHAMSON, REED & BILSE
200 Russell Street, Suite 200
Hammond, IN 46320
(219) 937-1500

ROBERT BERGER, ESQ., 2701-45
3912 Highway Avenue
Highland, IN 46322
(219) 838-7000
Attorney for Hammond
City Council

Attorneys for Petitioners

APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

APPENDIX A

1. January 13, 2005 Opinion of the Indiana Supreme Court 1

2. March, 15, 2005 Order of the Indiana Supreme Court Denying Rehearing 37

3. May 27, 2004 Order of the Indiana Supreme Court 38

4. January 13, 2005 Order of the Indiana Supreme Court 41

APPENDIX B

1. Petition for Rehearing in the Indiana Supreme Court Raising Federal Questions 43

APPENDIX C

1. May 7, 2004 Special Findings of Fact, Conclusions of Law Thereon, And Declaratory Judgment and Emergency Preliminary Injunction 68

APPENDIX D

1. U.S. Constiution Amendment XIV 87

2. U. S. Const., Art. IV, § 4 111

3. U. S. Const., Art. VI, cl. 2 112

4. Title 42 United States Code Section 1971 89

5. Indiana Const. Art. IV, § 22 98

6. Indiana Const., Art IV, § 23 100

7. Ind. Const., Art. X, § 1 113

8. Ind. Code 6-1.1-4-32 101

9. Ind. Code 6-1.1-8.5, et .seq. 106

10. I. C. 6-1.1-4-35 115

APPENDIX E

1. Affidavit of Betsy J. Brand 124

2. Final Determination
In the matter of the 2002 General Reassessment
of: ISG Integrated Mill, Lake Co., Indiana 129

3. Final Determination
In the matter of the 2002 General Reassessment
of: Ispat Mill, Lake Co., Indiana 131

4. Final Determination
In the matter of the 2002 General Reassessment
of: United States Steel Gary Works 133

5. Preliminary Certification of the 2002 Real Property True Tax Value for United States Steel
Integrated Steel Mill, Lake County, IN 136

In the Indiana Supreme Court

No. 45S00-0405-CV-224

GOVERNOR OF THE STATE
OF INDIANA, ET AL.,

Appellants
(Defendants below),

v.

MILLER *CITIZENS* CORPORATION,
ET AL.,

Appellees
(Plaintiffs below).

Appeal from the Lake County Superior Court, No. 45D05-0404-PL-91
The Honorable Robert A. Pete, Judge

On Direct Appeal

January 13, 2005

Boehm, Justice.

In 2001, the General Assembly passed two statutes that applied only in Lake County and provided for countywide reassessment of property for tax purposes to be conducted by the Department of Local Government Finance and by private contractors selected by the DLGF. The plaintiffs are a group of taxpayers who brought an action in April 2004 in Lake Superior Court seeking a declaratory judgment that these statutes are unconstitutional. The bills for taxes due in 2003 had not yet been mailed due to delays in the reassessment process and the plaintiffs asked that the taxing authorities in that county be enjoined from mailing bills for the property taxes due in 2003.

The trial court found the statutes to violate five separate provisions of the Indiana *Constitution* and granted the requested preliminary injunction. The Attorney General contended that exclusive jurisdiction over this case lies in the Tax Court and on that ground asked this Court for a writ of mandamus and prohibition. While that writ proceeding was pending, an appeal of the preliminary injunction was also initiated. This Court stayed the trial court's preliminary injunction. As a result the taxing authorities were free to mail the bills for taxes due in 2003. We then ordered the writ proceeding and the appeal to be argued concurrently. This opinion addresses both.

We hold that the Lake Superior Court had no jurisdiction to entertain these claims. We recognize that ordinarily lack of jurisdiction of the trial court would preclude deciding any other issues. However, this case presents a challenge to the entire assessment process in Indiana's second most populous county. For the reasons explained below, we think it is clear that the plaintiffs will ultimately fail in their effort to enjoin the tax bills produced by the 2002 countywide reassessment. It is not in anyone's interest to preserve false hopes by resolving this appeal on jurisdictional grounds alone. In short, there is broad public interest in a prompt resolution of this case, and the parties ask us to address the merits of the plaintiffs' claims without regard to jurisdiction. For these reasons we do so without delaying a final resolution of this matter.

We conclude that the statutes providing for private parties or the DLGF to assess certain assets in Lake County violate one of the provisions of the Indiana Constitution on which the plaintiffs rely, but not the other four. Although the 2001 laws violated Article IV, Section 22 of the Indiana Constitution as special legislation providing for the assessment of taxes, in 2004 the General Assembly passed a statute authorizing the assessment conducted pursuant to the 2001 legislation. This "curative" legislation validated the acts taken under the unconstitutional special legislation. Moreover, plaintiffs waited until reassessment was completed to seek injunctive relief. In the meantime, other taxpayers and local government units relied on the ongoing reassessment process provided by statute to supply funding for essential day-to-day functions of government. For that reason as well, plaintiffs' claim for injunction was barred by the delay in seeking equitable relief.

Factual and Procedural Background

In broad brush, the amount of property taxes owed for each individual property is set by allocating the total amount of property taxes to be raised in a taxing district among all pieces of property in proportion to their assessed valuations. If the total to be raised increases, of course the sum of all tax bills in the district goes up by that amount. But, the total amount to be raised is unaffected by a reassessment of property valuations. If all assessed valuations go up or down by the same percentage as the result of a reassessment, even if there is a large change in the dollar amount of the assessed valuation on each property, there is no change in the tax burden of any individual property. In simplified terms, if the assessed valuation of every property doubles, it would have no effect on the tax bills of any of them. If, however, some assessed valuations go up or down more than others, as is always the case in the real world, some taxes go up and some go down, but the gains by those whose assessed valuations go down more than the average are offset by losses among those whose assessed valuations increase more than the average. In other words, reassessment is a zero sum game for all property in the affected area.

As explained in more detail below, Lake County has for several years had a history of uneven assessments and generally lower assessed valuations than those in other parts of the state for similar properties. In response to this situation, the two challenged provisions were enacted by the 2001 session of the General Assembly in the same law, H.B. 1902. Both by their terms apply only in counties with populations between 400,000 and 700,000, and Lake County is the single county meeting that criterion. The two statutes now appear as Indiana Code section 6-1.1-4-32 (2004), which authorized the DLGF to employ private firms to as,,;ess real property in Lake County, and Indiana Code section 6-1.1-8.5-1 et seq., which provided for the DLGF itself to assess industrial properties in Lake County with an estimated assessed value in excess of $25 million.

Indiana property taxes are due in May and November of each year based on assessed valuations as of March 1 of the preceding year. Both of the challenged statutes provide procedures that formed a part of the process of determining the assessed valuation of property in Lake Coun .ty as of March 1, 2002. The 2002 reassessment was completed, although later than usual, by a private firm selected by the State Board and by the DLGF. In practical terms, the issue here is that the reassessment resulted in proportionally lower assessed valuations of some large industrial properties in Lake County compared to the changes in assessed valuations of some residential properties, notably those owned by the plaintiffs. As a result, the 2003 taxes increased for the owners of properties whose changes in assessments were proportionally higher. For some properties, these new taxes were dramatically higher than their historic levels. The State points out that if the reassessment is accurate, the increase in taxes compared to prior years merely corrects an underpayment these residential properties have enjoyed in the past. The plaintiffs counter that the effect of increased taxes is to lower the market value of their residential properties because most homes are purchased based on the monthly cash payments required for principal and interest on a mortgage plus taxes and insurance. An increase in taxes means a potential purchaser has less available for monthly mortgage payments and therefore produces a reduced market value of the property.

Article IV, Section 22 of the Indiana Constitution prohibits "local or special laws" dealing with a number of subject matters, one of which is "providing for the assessment and collection of taxes " Article IV, Section 23 provides that even if a law does not address one of the Section 22 items, it nevertheless must be a general law "where a general law can be made applicable." Finally, Article X, Section 1 directs the General Assembly to "provide, by law, for a uniform and equal rate of property assessment and taxation "Plaintiffs brought this action in Lake Superior *Court,* contending that these two statutes violate each of these three provisions, and two others as well. For that reason they claim that the collection of the 2003 property taxes in Lake County must be enjoined. The State responds that the trial court lacks jurisdiction over this case. The State also contends that the statutes are constitutional, and in any event the resulting assessed valuations are correct, so there is no point in redoing the assessment by some other agency that would, after some extended time, arrive at the same results, and in the meantime severely interfere with the day-to-day operation of local government in Lake County.

After a hearing in which no testimony was taken, the trial court granted a preliminary injunction. The State first asked this Court, pursuant to Original Action Rule

I(A), for a writ of mandamus and prohibition, contending that the trial court lacked jurisdiction based on the plaintiffs' failure to exhaust administrative remedies. The State also initiated an appeal of the preliminary injunction pursuant to Appellate Rule 14(A)(5). Because the preliminary injunction was based on a holding that a statute was unconstitutional, the appeal also is directly to this Court. App. R. 4(A)(1)(b). We granted the State's request for a stay of the trial court's preliminary injunction, permitting the tax bills to be mailed. We *then consolidated* the *argument* on the two *proceedings* and now address both in this opinion,

The parties do not dispute the underlying facts. The issues relating to the jurisdiction of the trial court and the merits present only questions of law.

I. Jurisdiction of the Trial Court

Plaintiffs brought this suit contending their properties were incorrectly assessed and therefore their soon-to-be mailed tax bills were too high. The statute creating the Tax Court provides that that court has "exclusive jurisdiction over any case that arises under the tax law of this state and that is an initial appeal of a final determination" of the Indiana Board of Tax Review. Ind. Code § 33-3-5-2 (2003).[1] Other statutes provide in some detail the procedure for contesting an assessment of property. These include an appeal from county determinations to the Board, and a provision in Indiana Code section 6-1.1-15-5(b) for review of challenges to assessments by the Tax Court "under I.C. 4-21.5-5." This refers to the Judicial Review chapter of the Indiana Administrative Orders and

---

[1] P.L. 98-2004 repealed and recodified Title 33. Effective July 1, 2004, this section appears at Ind. Code § 33-26-3-1 (2004).

Procedures Act which includes Section 4(a) requiring exhaustion of administrative remedies before judicial review may be initiated. In State v. Sproles, 672 N.E.2d 1353, 1357 (Ind. 1996), we held that a taxpayer wishing to contest a tax must first exhaust administrative remedies, and that these statutes collectively deprive the other trial courts of this state of jurisdiction over any case that "principally involves collection of a tax or defenses to that collection." As explained in Lake County Property Tax Assessment Board of Appeal v. BP Amoco Corp, N.E.2d -- (No. 49S10-0309-00400) (Ind. Jan. 13 2005), handed down today, a challenge of the sort plaintiffs bring in this case is properly presented in the first instance to the Indiana Board of Tax Review. Accordingly, judicial review lies exclusively in the Tax Court. See also State Bd. of Tax Comm'rs v. Mixmill Mfg. Co., 702 N.E.2d 701,702 (Ind. 1998); Winski Bros. v. Bayh, 679 N.E.2d 912, 915 (Ind. Ct. App. 1997). In 2001, after these decisions, the statutes discussed above were amended to substitute the Board of Review for the State Tax Board as the agency entertaining property tax appeals from local taxing authorities, but the language conferring exclusive jurisdiction on the Tax Court and requiring exhaustion of administrative remedies was preserved without change. Pub. L. No. 198-2001, § 98, 2001-2 Ind. Acts 1293, 1407. We perceive no legislative dissatisfaction with the construction of that provision we made explicit in Sproles, and find it controlling here.

Plaintiffs contend that the Lake Superior Court, as a court of general jurisdiction, has jurisdiction "over the constitutionality of these statutes." Precisely the same claim was advanced and rejected in Sproles, 672 N.E.2d at 1357. That case involved a claim, asserted in a court of general jurisdiction, that a tax could not be collected because the constitution prevented its collection. The claim in Sproles was that the constitutional ban on double jeopardy prevented collection of the Controlled Substance

Excise Tax where the taxpayer had been convicted of a crime for possession of the same marijuana that was the subject of the tax. We held that such a case "arises under" the tax laws and therefore must be brought in the Tax Court after exhaustion of administrative remedies. Id. at 1361. The sole relief the plaintiffs seek here is an injunction against the collection of property taxes, and their claim is that the assessed valuations of Lake County property are invalid because the assessment was done pursuant to unconstitutional statutes. These constitutional issues are asserted as the basis of defense to the collection of the property taxes. Just as Mr. Sproles did, Plaintiffs here seek to bring their claim in a court of general jurisdiction to enjoin collection of a tax.

The trial court concluded that this case involves assessments, not taxation, and therefore Sproles was inapplicable. As already noted, the statute goveming challenges to assessments, I.C. § 6-1.1-15-5 (2004), expressly incorporates the exhaustion requirement as to challenges to assessments. Assessments, just as other challenges to a tax, are routed through the Board of Tax Review, arid we see no distinction for these purposes between a challenge to assessments, whether procedural or substantive, and any other basis to contest a tax.

We are equally unpersuaded by Plaintiffs' suggestion that it makes a difference that the tax in Sproles was a "listed tax" regulated by the Department of Revenue, rather than the property tax administered through the Board of Tax Review. The same statutory language imposes jurisdictional restrictions on both types of tax. Both are subject to the same requirement of exhaustion of administrative remedies and both are subject to the exclusive jurisdiction of the Tax Court by the same language in Indiana Code section 33-3-5-2(a) (2003), which applies that language to both listed taxes in subsection (a)(1) and to property taxes in subsection (a)(2).

In summary, the question whether the Tax Court jurisdiction is exclusive is purely a matter of legislative intent. In 1996, we held that the purpose of the 1986 legislation creating the Tax Court was to consolidate tax litigation in one forum, and deprive the courts in various locations around the State of jurisdiction to address these issues. Sproles, 672 N.E.2d at 1357. Despite his claim that resort to his administrative remedy was futile, Sproles was required to exhaust administrative remedies and present his constitutional claims to the Tax Court. Id. at 1361. That result is dictated by the General Assembly, and the same statutes govern the plaintiffs' claim here.

II. The Merits of Plaintiffs' Claims

Failure to exhaust administrative remedies is a defect in subject matter jurisdiction. M-Plan, Inc. v. Ind. Comprehensive Health Ins. Ass'n, 809 N.E.2d 834, 837 (Ind. 2004) (citing Austin Lakes Joint Venture v. Avon Utils., Inc., 648 N.E.2d 641,644 (Ind. 1998)). Accordingly, the trial court was without jurisdiction to entertain this claim, and a writ of prohibition is properly requested. State v. Allen Superior Court, 699 N.E.2d 1134, 1135 (Ind. 1998). Plaintiffs request us to address the merits of their contentions, even if the trial court lacked jurisdiction. We agree we should do so. The issues have been fully briefed by the parties and by the intervenors, and a resolution of the merits of these contentions is in the public interest.

A. Special Legislation Under Article IV of the Indiana Constitution

Both Section 22 and Section 23 of Article IV of the Indiana Constitution prohibit "special" legislation under some circumstances. Plaintiffs contend that the statutes providing for DLGF to assess industrial property and for private contactors to be hired to assess residential property are local or special legislation as that term is used in both sections. We agree that these laws are "special" for purposes of Article IV. The statutes authorizing the 2002 reassessments by their terms applied only in counties of population between 400,000 and 700,000, and Lake County is the only such county. To be sure, some statutes applicable only to areas with specified populations may be justifiable as special legislation, because the parameters rationally relate to the subject matter of the legislation. They may also be viewed as "general legislation" if the subject matter is one that is rationally related to population, such as the basic structure of local government. So, as we observed in City of South Bend v. Kimsey, 781 N.E.2d 683, 694 (Ind. 2003), the Unigov statute, which applies only to counties with cities of the first class, and therefore only to counties with cities of certain size, may properly be viewed as a general law even if it applies in practice in only one place. By hooking the defining characteristic (in Unigov a city of the first class) to the justifying characteristic (rational desire for more expansive and encompassing form of metropolitan government), legislation applicable in only one county may over time become applicable in others. Here however, the apparent reasons for limiting the application of the statutes in question are not related to population. Rather, they plainly derive from the troubled history of property taxation in Lake County discussed below. Thus, the rationale for population-based statutes relating to the organization of local government do not apply here, and the law, applicable only in Lake County, is "special" legislation whether it describes Lake County by name, by population parameters, or by some other unique characteristic. Id. at 692.

1. *Local laws providing for the assessment and collection of taxes*

Article IV, Section 22 provides a list of subjects as to which "local or special laws" are prohibited. Among these are laws "providing for the assessment and collection of taxes " The State argues that Section 22 does not apply to the statutes in question here because the Section is written in the conjunctive, prohibiting local laws that "provide for the assessment and collection of taxes." Because there is no "collection" aspect to these laws, the State contends Section 22 is inapplicable. We do not agree. The constitutional debates make clear that lack of uniform assessment practices was one of the principal concerns underlying both Article X, Section 1, and Article IV, Section 22. See, e.g., Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana, Vol. II at 1290 (1850), where Douglass Maguire, a delegate from Marion County, finding "great inequality in the assessment and taxation of property," called for checks upon county assessors through a Board of Equalization to value all real property on an equal basis. Although "and" is normally taken as conjunctive, it may be read as disjunctive if the context makes clear that is the legislative intent. See, e.g., State v. Myers, 146 Ind. 36, 38, 44 N.E. 801,801-02 (1896); Brook v. State, 448 N.E.2d 1249, 1251 (Ind. Ct. App. 1983).

We think the history of Section 22 makes clear that it was addressed to local laws dealing with either assessment of property or collection of taxes, or both. Section 22 had no counterpart in the 1816 Constitution and appeared for the first time in the Indiana Constitution as a result of the 1851 Constitutional Convention. It was the product of widespread dissatisfaction with the large number of laws passed by the legislature in the early days of this State dealing with purely local subjects. Many of these imposed or authorized local taxes for specific projects, typically roads or schools. Others addressed a variety of other special and local interests, even granting divorces.

To "assess" property is to value it. Merriam Webster's Collegiate Dictionary. 69 (10th ed. 1993). To "assess" a tax is to impose it. Id. Thus, as a matter of syntax, Section 22's reference to laws "providing for the assessment and collection of taxes" may be read to deal only with laws passed for the imposition or collection of taxes, and not the valuation of property for tax purposes. However, in State v. Hoovler, 668 N.E.2d 1229 (Ind. 1996), we addressed a claim that Section 22 prohibited a statute raising the maximum local county option income tax rate to 1.25% in Tippecanoe County from the 0.7% rate applicable statewide. The effect was to permit county authorities to adopt an additional 0.55% local income tax. After a review of the historical roots of Section 22, this Court held that this statute, though a local law, did not violate Section 22 because it did not "authorize any new property valuations or changes in the system of tax gathering." Id. at 1233. The authorization of an increase in the rate of an existing tax was not the "assessment and collection" of a tax. Indeed, we specifically referred to a dictionary of the time, noting that "assessment" includes "valuation of property.., for purpose of taxation." Id. Hoovler thus made clear that local laws dealing with assessment of property for tax purposes were prohibited by Section 22. This is of course consistent with the history of Section 22, as variations in assessment procedures were the most frequently cited reasons for the need for constitutional limits on local legislation. Accordingly, we agree with plaintiffs that these provisions constitute special legislation "providing for the assessment and collection of taxes," and therefore violate Article IV, Section 22 of the Indiana Constitution. For the reasons explained in Parts III and IV, however, the reassessments conducted under these statutes are not invalid by reason of this flaw in the statutes.

2. Special laws under Article IV, Section 23

Plaintiffs contend these laws also violate Article IV, Section 23, which requires that "where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State." As we held in Kimsey, under Section 23, a law limited to a given county is prohibited unless "there are inherent characteristics of the affected locale that justify local legislation." Kimsey, 781 N.E.2d at 692. If the affected county reflects unique circumstances that rationally justify the legislation, then a general law is not "applicable" elsewhere and Section 23 is not violated. Id.

The State points to the long and tortured history of property taxation in Lake County, described in Mantonovich v. State Bd. of Tax Comm'rs, 705 N.E.2d 1093, 1095 (Ind. Tax Ct. 1999) as "an endemic problem with the uniformity of assessments within classes of property." As explained above, if some parts of a county significantly underassess properties compared to the assessed valuations placed on similar properties elsewhere, the effect is to shift tax burdens from the underassessed properties. Indeed, that was the complaint of the town of St. John, which is in Lake County, that led to the initial holding that the then-prevailing "true tax value" system of assessment did not produce a uniform and equal method of assessment in violation of Article X, Section 1 of the Indiana Constitution. Boehm v. Town of St. John, 675 N.E.2d 318, 324 (Ind. 1996).

Until 2001, the State Tax Board had the functions of both the Board of Tax Review and the DLGF. In 1998, the State Board had concluded, after public hearings, that widespread underassessment in various units of Lake County required ordering a countywide reassessment, and had employed a private contractor to reassess all property in Lake County. Though noting the State Board's finding that there was "a widespread recognition that an assessment problem exists in Lake County," the Tax Court concluded that the Board had no authority to employ a private firm to perform the reassessment. Mantonovich, 705 N.E.2d at 1098. In response to that decision, the General Assembly promptly granted the Board the authority the Tax Court found lacking by enacting the statutes Plaintiffs challenge in this case. We thus have administrative findings, judicial findings, and legislative action all pointing to a unique circumstance created by uneven assessment practices in various parts of Lake County. And, as Plaintiffs point out, a few huge industrial complexes in Lake County constitute significant percentages of all taxable property in some taxing districts, a situation not faced in any other county, and requiring great care in valuing such a dominant asset of unique kind and character for which there is no ready market comparable to that for residential housing. We are directed to no comparable set of circumstances in any other county producing such widespread tax inequities and unusual issues of valuation. These conditions readily justify local legislation to deal with a reassessment problem of a scale and complexity not found elsewhere in the state.

B. Other Constitutional Challenges

Plaintiffs contend without much explanation that these statutes violate Article X, Section 1 of the Indiana Constitution. That section requires a "uniform and equal rate of property assessment and taxation." We have held that the system of property taxation must be based on a system that causes "each taxpayer's property wealth bear its proportion of the overall property tax burden." Town of St. John, 675 N.E.2d at 324. There is no basis to conclude that the statutes in question produce a disproportionate assessment. Different procedures to accomplish a reassessment based on the same substantive rules of valuation do not violate that provision. Indeed, this Court has held that the goal of statewide uniformity and proportionality trumps a local government's authority to value property. Zoercher v. Agler, 202 Ind. 214, 225-26, 172 N.E. 186, 190-91 (1930). The end result—a "uniform and equal rate" of assessment—is required, but there is no requirement of uniform procedures to arrive at that rate. To the contrary, the power of local authorities to implement tax laws is purely statutory in nature. The only constitutional constraint under Article X, Section 1 is upon the State itself, which must provide a uniform and equal rate of assessment, but may provide whatever procedures are appropriate consistent with the other provisions of the Constitution.

For the same reason that these statutes do not violate Article IV, Section 23, they also do not violate Article I, Section 23, which requires that legislative classifications be reasonably related to inherent characteristics that define the class. Plaintiffs do not elaborate on these claims and we are left to surmise what the classification may be. Taking the complaint at face value, the class appears to be Lake County taxpayers compared to those in all other counties. As explained above, given the long history of systematic underassessment in parts of Lake County, there is abundant reason to provide for reassessment of property in that county by means different from those applied in other counties. The statutes thus satisfy the first prong of the requirements of Article I, Section 23. The separate treatment of Lake County is "reasonably related" to its "distinguishing characteristics." Collins v. Day, 644 N.E.2d 72, 80 (Ind. 1994).

Plaintiffs also advance an argument, not clearly tied to any specific constitutional provision, the substance of which is that local assessors would recognize the adverse effect that lowering valuations of industrial properties would have on some residential properties. This is compounded, plaintiffs say, by the fact that this reassessment was performed by two different agencies, private contractors for residential properties and DLGF for industrial property. They claim a constitutional right to have locally elected officials perform the assessments. There are several things wrong with this claim. First, valuations, whether made by local authorities or by others, are as of March 1 of a given year. Any shift in valuations caused by tax bills in the future is a matter for future reassessments. Second, this argument boils down to a claim that these plaintiffs have a right to preferential treatment under the property tax laws. That is precisely the contention rejected by other taxpayers, including the residents of St. John, who felt disadvantaged by selective underassessments in parts of Lake County and claimed those disparities violated their rights to uniform and equal taxation. Without a showing that the substantive results reached by the reassessments are incorrect, we will not indulge the assumption that local officials would arrive at a different result. Finally, there is nothing in the Constitution that guarantees an assessment by locally elected officials. The clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor are required by Article VI, Section 2 to be "elected, in each county." There is no such requirement as to assessors. Indeed, at some points in the history of this state the disparities created by local assessors responding to local election pressures created demand for a statewide equalization board to eliminate the resulting unfairness. Justin E. Walsh, The Centennial History of the Indiana General Assembly 1816-1978, 102-04 (1987).

Plaintiffs' claim that these statutes violate Article I, Section 21 against "taking" of property without compensation is frivolous. It is well established that taxation is not a "taking" within the meaning of this provision. Hutchins v. Town of Fremont, 194 Ind. 74, 83, 142 N.E. 3, 11-12

(1924); Bd. of Comm'rs of Jackson v. State, 147 Ind. 476, 492, 46 N.E. 908, 912 (1897); 5A Ind. Law Encyclopedia, Constitutional Law § 446, at 427 (1984). The properties remain in the hands of the owners, and their use is unaffected by the reassessment.

Finally, Plaintiffs advance a number of arguments questioning the wisdom of the legislation, but raise no constitutional issue. For example, they claim that local authorities should be given the opportunity to perform the assessments. They also question the lack of taxpayer awareness of the effect of reassessment based on the fact that many homes are mortgaged and the mortgagees, as escrow agents, receive the tax notices. These claims present no legal issue. The policy arguments must be directed to the General Assembly, not this Court. Plaintiffs' other claims, such as the unconstitutionality of the homestead tax credit, were not presented to the trial court and are not available on appeal.

III. The 2004 Law as Curative Legislation

A general law could readily have been crafted in 2001 that would have accomplished what the General Assembly attempted to do. As explained in Part II.A.2, Lake County has a long and troubled history of assessment of property, including findings of the State Board as early as 1998 that systematic underassessment required a countywide reassessment. A statute applicable to all counties permitting the use of contracted private assessors or permitting the DLGF to perform that function where such a finding is made would be a general law not subject to Article IV challenge as special legislation. In 2004 such a law was passed.

Indiana Code section 6-1.1-4-35 (2004), applies by its terms to a county "other than a county subject to section

32 [I.C. § 6-1.1-4-32]." At the time this law was passed, presumably the intent of this exception was to exclude Lake County, which, as explained in Part II, is the only county that meets the population parameters of "section 32." Because section 32 violates Article IV, Section 22, however, no county is "subject to section 32" and section 35 applies by its terms to Lake County and all ninety-one other counties. Moreover, section 35(v) specifically provides that "the provision of this section are severable as provided in I.C. § 1-1-1-8(b) [the general severability statute]." Pursuant to Section 35(v), we are to sever any invalid portions of section 35. If section 35 were inapplicable in Lake County, it would constitute special legislation for the same reasons section 32 runs afoul of Article IV, Section 22 of the Indiana Constitution. Based on the effort in 2001 to accomplish essentially the same thing for Lake County, we think it clear that the General Assembly would prefer statewide application of section 35 to its statewide invalidity. Accordingly, even if section 35 is read to exclude Lake County, that exclusion would fall, for the purpose of preserving the statute.

Section 35 provides for DLGF to order a State-conducted reassessment for a county if it determines that the local officials are unable to complete the reassessment by October 2003 or are likely to complete reassessment in an "inaccurate manner." The DLGF is authorized to contract with private parties to perform the reassessment. Nothing precludes the DLGF from performing a part of the reassessment itself and contracting for others. The DLGF was thus authorized by the 2004 legislation to do substantially the same things in Lake County that were in fact done under color of section 32. We are unwilling to fortify the armory of those who attack the law as famous for its ability to elevate form over substance. We see no basis to trigger the disruption that would be generated by invalidation of the entire county's property tax base where there is no showing that any identifiable property has been *incorrectly assessed.* Indeed, what plaintiffs seek is court preservation of a system of taxation that was held invalid six years ago in State Board of Tax Commissioners v. Town of St. John, 702 N.E.2d 1034 (Ind. 1998).

The 2004 law acts as curative legislation by authorizing actions taken pursuant to an unconstitutional statute. "A curative act is a statute passed to cure defects in prior law, or to validate legal proceedings, instruments, or acts of public and private administrative authorities. In the absence of such an act the statute would be void for want of conformity with existing legal requirements . . . . [A] curative act may validate any past action which the legislature might have authorized beforehand." 2 Norman J. Singer, Statutes and Statutory Construction, § 41.11, at 466-67 (6th ed. 2001). This Court has adopted Judge Cooley's test for curative acts:

> If the thing wanting or which failed to be done, and which constitutes the defect in the proceedings, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act, which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by a subsequent law.

See State ex rel. Harris v. Mutschler., 232 Ind. 580, 590-91, 115 N.E.2d 206, 210 (1953) (citing 2 Thomas M. Cooley, Constitutional Limitations at 775-76 (7th ed.)). A curative act should be liberally construed. Mutschler, 232 Ind. at 591, 115 N.E.2d at 210. A curative or validating statute is a species of retrospective legislation, "but that does not make such a curative act unconstitutional unless violating some constitutional provision such as impairing the obligation of a contract or the taking of property without due process." Martin v. Ben Davis Conservancy Dist., 238 Ind. 502, 512, 153 N.E.2d 125, 130 (1958); See Muncie Nat'l Bank v. Miller, 91 Ind. 441,446 (1883). Therefore, when passing curative legislation the legislature may recognize and validate a de facto condition or status. There are limitations to this doctrine. For example the legislature cannot authorize an unconstitutional act, Martin, 238 Ind. at 513, 153 N.E.2d at 130, or cure a jurisdictional defect in a court proceeding, Seitz v. Mosier, 192 Ind. 416, 421-22, 136 N.E. 840, 842 (1922). But norse are applicable here. The legislature plainly could have authorized statewide reassessments under the procedures of section 35.

The relevant point here is that the legislature may pass curative legislation that validates official acts performed pursuant to an act which a court later determines is unconstitutional so long as the curative statute does not suffer from any of the same defects as the original law. Thus, in Martin, the 1947 legislature passed an act that gave trial courts the authority to establish conservancy districts and appoint their directors and appraisers. Subsequently, the Court held that the 1947 law violated the requirement, since removed from Article IV, Section 19 of the Indiana Constitution, that the subject of every act "shall be expressed in the title." State ex rel. Pa. R.R. Co. v. Iroquois Conservancy Dist. Court, 235 Ind. 353, 359, 133 N.E.2d 848, 851 (1956). In response, the legislature passed the Conservancy Act of 1957 which by its terms authorized the conservancy districts established pursuant to the 1947 act and legalized prior acts of the board of directors for those districts. This Court held that because it was within the legislature's prerogative to establish the conservancy districts in 1947, it was also within the power of the General Assembly to cure any constitutional defects by passing curative legislation that meets constitutional requirements. Martin, 238 Ind. at 512, 153 N.E.2d at 130. Similarly, this Court in Mutschler, 232 Ind. at 591, 115 N.E.2d at 210, upheld a general law that legalized consolidated school districts that were defectively formed due to improper notice or invalid elections. It was within the legislature's discretion to dispense with those requirements for consolidation, so it was permissible to validate consolidations that had taken place without them, although they were required at the time the consolidation originally took place. Id.

In Fahlor v. Board of Commissioners of Wells County, 101 Ind. 167, 171-72 (1885), this Court declared that the proceedings and orders of the Wells County board were void because the board was not in a regular or special session when it approved the construction of a road. The next year, however, in Johnson v. Board of Commissioners of Wells County, 107 Ind. 15, 26 8 N.E. 1, 6 (1886), this Court upheld legislation passed one month after the decision in Fahlor, to legalize the proceedings of the county board as to the gravel road. The Court held that curative legislation is invalid if it "materially interferes with or overthrows vested rights, creates and imposes new burdens, or infringes upon the judicial department of the government." Johnson, 107 Ind. at 19, 8 N.E. at 5-6; see also 5A Ind. Law Encyclopedia, Constitutional Law § 272, at 188 (1984). But in the absence of any of these, a curative law salvages actions taken under defective statutes or in disregard of procedural requirements that are not required by due process. This reasoning has been specifically followed by the United States Supreme Court in sustaining curative laws authorizing assessments for tax purposes. In Williams v. Supervisors of Albany, 122 U.S. 154, 164 (1887), the Court stated: "It is only necessary. . . to consider whether the assessment could have been ordered originally If [the statutory flaws] were not essential to any valid assessment, and therefore might have been omitted or performed at another time, their omission or defective performance may be cured by the same authority." And curative legislation has been specifically upheld to validate acts taken pursuant to laws later held to be special legislation. See Marfa Indep. Sch. Dist. v. S. T. Wood, 141 S.W.2d 590, 592 (1940).

In sum, in 2004 the Legislature authorized the DLGF to contract with private parties to perform property value reassessments or to conduct reassessments itself in counties where DLGF determines that local officials are unable to complete the reassessment by October 2003 or are likely to complete reassessment in an "inaccurate manner." The DLGF did find widespread unequal assessment practices in Lake County, and pursuant to section 32 the county's property values were reassessed. The legislature had the power to authorize the DLGF to order the reassessment of property values in Lake County at the time it passed section 32. It therefore also had the power to cure the constitutional defect of the act by enacting section 35. Accordingly, the 2002 reassessment is valid subject to any individual errors in assessment that are determined in the normal review process.

The doctrine of curative legislation permits the legislature in effect to ratify a previously unauthorized reassessment. This produces no injustice. There are unconstitutional statutes and unconstitutional statutes. The constitutional flaw claimed here is not that the plaintiffs' property is incorrectly valued, or that the assessments violated the substantive requirement of Article X that they be "uniform and equal." Indeed there is no showing that the result would be different if the local assessors had done the job and done it properly. The constitutional issue is merely a claimed lack of authority of the persons who carried out the assessment under color of a statute that had never been declared unconstitutional at the time they acted. Moreover, as we hold today in Department of Local

Government Finance v. Commonwealth Edison Co. of Indiana, N.E.2d -- (No. 49S10-0307-TA-293) (Ind. 2005) (slip op. at 6), the law permits an appeal of a property owner's assessments even if the basis of that appeal is an incorrect assessment of other properties. The law thus affords a remedy for any inequity. But that remedy is not upsetting the entire fiscal structure of the county, which would be the result if some taxpayers are assessed on the basis of pre-reassessment values and those who are pleased with the reassessment get its benefits.

IV. Appropriate Relief

The injunctive relief granted by the trial court is inappropriate for reasons apart from lack of jurisdiction. Both the balance of benefits and burdens and the doctrine of laches preclude the injunctive relief awarded by the trial court. These are different ways of making the legal point that this lawsuit for declaratory judgment and injunction comes far too late in the process to obtain the result the plaintiffs seek. Plaintiffs cannot wait until the eve of the date on which already overdue tax bills are to be sent out to launch an attack on a process that has been underway for over three years and is critical to the operation of government.

A. Injunctive Relief is Improper

Although we find the statutes authorizing these assessments to violate Section 22, we are given no basis to conclude that a different result would be produced by a reassessment by local authorities. The trial court found, presumably correctly, that the effect of the reassessment is to increase taxes on some properties compared to the taxes on the same property for prior years. But there is no finding that the reassessment done pursuant to these statutes produced a different result from the assessments that will ultimately prevail if the tax bills are enjoined. Indeed, if the local authorities do their jobs properly, and the reassessment was done properly, there is no basis to conclude they would reach a different result for any specific piece of property. Of course, one can conjecture that there might be differences, but there is no basis to conclude what those differences would be, at least without imputing improper motives to the local authorities. As the State points out, the provisions governing the values to be placed on property are applicable statewide. The only effect of the statutes the plaintiffs attack is to change the agency that performs the assessmer~t, not the substance of what the assessor is to do. Indeed, we have no basis to conclude that the assessed valuations produced by the DLGF or the private firm are any different from what would have been produced by a timely assessment if the local authorities had been able to produce one, or would be produced by a reassessment in the future.

As a matter of basic equity law, and the law of preliminary injunctions, courts must consider the relative benefits and burdens of granting injunctive relief, even if the plaintiffs are correct. See Ind. Family & Soc. Servs. Admin. v. Walgreen Co., 769 N.E.2d 158, 161 (Ind. 2002). A court, considering an application for preliminary injunction "will consider the traditional balance of convenience; this is to say, it will consider whether a greater injury would be done by granting the injunction than would result from a refusal to do so." 43A C.J.S. Balancing Equities, Inconvenience, Hardship, or Injury-Temporary or Preliminary-Injunction or Restraining Order § 82, 102 (2004). Equity courts are traditionally free to balance equities and hardships in determining whether or not to grant an equitable remedy. Dan D. Dobbs, Law of Remedies, § 2.4(1), at 91 (2d ed. 1993). Moreover, injunctive relief is equitable in nature, and courts will not exercise that authority to produce useless results. State ex rel Board of Sanita-ry Commissioners of Terre Haute v. Superior Court of Vigo C -ty., 247 Ind. 617, 220 N.E.2d 336 (Ind. 1966). Given that the new law, which became effective June 30, 2004, would permit the DLGF to redo the entire reassessment and arrive at the same place, injunctive relief must be denied on that ground alone. "The jurisdiction of a court of equity extends no farther than is necessary to do some equitable thing; it has no jurisdiction to do useless, unjust, and inequitable things." In re Hawkins Mortgage Co., 45 F.2d 937, 940 (7th Cir. 1931). "It is an age old axiom that equity will not do a useless thing." Townsend v. Quern, 473 F. Supp 193, 198 (N.D. Ill. 1979). An injunction is to be denied if the public interest would be substantially adversely affected, even if the plaintiff has a claim Fumo v. Medical Group of Mich. City, Inc., 590 N.E.2d 1103, 1108 (Ind. Ct. App. 1992).

B. *Laches*

Finally, just as in any other case seeking equitable relief, undue delay in seeking the relief may bar relief. Here the plaintiffs brought this suit on April 29, 2004, seeking to enjoin the Lake County Treasurer from sending out tax bills that should have been due in March 2003. But due to delays in reassessment, the tax bills were already over a year late. The claim is that these two statutes, on the books since 2001, were unconstitutional. Rather than seeking to enjoin the implementation of these reassessment procedures, the plaintiffs waited until they were completed, no other reassessment having been conducted, and then sought to enjoin the collection of 2003 taxes already over one year delayed. This is a classic case for invoking of the equitable doctrine of laches.

Laches is an equitable doctrine. Unlike statutes of limitations, it does not principally turn on time alone.

Rather, if a party, with knowledge of the relevant facts, permits the passing of time to work a change of circumstances by the other party, laches may bar the claim. Shafer v. Lambie, 667 N.E.2d 226, 231 (Ind. Ct. App. 1996). As early as 1996, the need for reassessment was obvious as a result of this Court's decision in Boehm v. Town of St. John, 675 N.E.2d 318 (Ind. 1996). The basic fact of the legislature's provision for reassessment in Lake County by private contractors and the DLGF was in the public record and widely publicized since 2001. The county's taxing authorities are now dependent on the results of that process to move forward, if belatedly, to proceed with the ordinary process of funding government. Under these circumstances laches bars granting of an injunction based on facts and theories available to the plaintiffs three years earlier.

Conclusion

The preliminary injunction entered by the trial court is vacated. This case is remanded with instructions to dismiss the complaint for lack of jurisdiction.

Dickson, J. concurs.

Shepard, C.J., and Sullivan J. concur in Part I with separate opinion by Sullivan, J.

Rucker, J. concurs in Parts I, II, and IV, and dissents as to Part III with separate opinion.

Sullivan, Justice, concurring in Part I.

I concur with the Court's earlier decision to vacate the trial court's injunction entered in this case and permit Lake County property tax authorities to mail property tax bills based on the new assessments that are challenged in this case. I also concur in part I of the Court's opinion. More specifically, I agree that the Legislature has deprived Indiana trial courts of jurisdiction to review the claims advanced by the taxpayers in this case. The Sproles case is clear and unequivocal precedent on this point.

At the same time, I agree with the Court that taxpayers whose property has been incorrectly assessed can appeal their assessments through administrative channels. This Court in Dep't of Local Gov't Fin. v. Commonwealth Edison Co. of Ind., No. 49S10-0307-TA-293, -- N.E.2d --, slip op. at 6-7 (Ind. Jan. 13, 2005), makes clear that the remedy is available even if the reason a taxpayer contends the taxpayer's assessment is too high is that other property in the township or county is assessed contrary to law. (The Department of Local Government Finance made clear in its filings in this case that it was prepared to review the assessments of over 5,000 Lake County residential taxpayers before the trial court's injunction in this case brought the proceedings to a halt. See Reply Br. of Relator-Appellants at 4.)

I recognize that it appears unwieldy if not unfair that taxpayers who believe they have been wrongly assessed—particularly, as in this case, where they believe they have been assessed pursuant to an unconstitutional statute—must go through several layers of administrative review before being allowed to appeal to the Tax Court. Indiana trial courts review claims of unconstitutionality all the time; why, the plaintiffs ask, should their claim be reviewed differently?

The short answer is, of course, that the Legislature has said so, and under our laws, it is up to the Legislature to determine the jurisdiction of Indiana trial courts. See Ind. Const., art VII, §§ 1, 8. But sound reasons explain why the Legislature established this procedure. Protests over taxes are frequent and yet taxes are needed to provide public safety and other public services. A system that channels tax protests through an orderly system of administrative and Tax Court review without risking abrupt stoppages in tax collections by order of any one of the state's hundreds of trial courts protects the interests of both taxpayers and of all of us who rely on government services. Furthermore, utilizing an orderly system of administrative and Tax Court review allows the executive and legislative branches to effect compromises of tax controversies, rather than have the answers dictated by (a variety of) courts.

It is in part because I believe that taxpayers and the executive and legislative branches should have maximum freedom to effect compromise of this tax controversy that I think the Court is wrong to reach the merits of the various constitutional claims advanced. More than a century ago, this Court said:

> Courts will not pass upon a constitutional question, and decide a statute to be invalid, unless a decision upon that very point becomes necessary to the determination of the cause. This court has repeatedly held that questions of this character will not be decided unless such decision is absolutely necessary to a disposition of the cause on its merits.

State v. Darlington, 153 Ind. 1, 4, 53 N.E. 925, 926 (1899); accord, Elk Grove Unified Sch. Dist. v. Newdow, 124 S. Ct. 2301, 2308 (2004) (quoting Ashwander v. Tennessee Valley Authori -ty, 297 U.S. 288, 341 (1936) (Brandeis, J., concurring)); Spector Motor Service, Inc. v. McLaughlin, 323 U.S.

101, 105 (1944) ("If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable."); *Owens Corning Fiberglass Corp. v. Cobb,* 754 N.E.2d 905, 916 (Ind. 2001); *Indiana Wholesale Wine & Liquor Co. v. State ex rel. Indiana Alcoholic Bev. Comm'n,* 695 N.E.2d 99, 106 (Ind. 1998); *Citizens Nat'l Bank v. Foster,* 668 N.E.2d 1236, 1241 (Ind. 1996).

Because a decision on the points discussed by the Court in Parts II through IV are unnecessary to the determination of this case, I express no opinion with respect thereto. Shepard, C.J., concurs.

Rucker, Justice, concurring in part and dissenting in part.

I respectfully dissent from part III of the majority opinion. In all other respects I concur.

The 2002 reassessment of real property in Lake County has resulted in a dramatic increase in the property tax obligations for most Lake County homeowners in general and the homeowners to this litigation in particular. In one instance a homeowner's tax bill increased by an astounding 208%, and in another instance by an even more astounding 559%.[2]The tax increase has had a devastating impact on the ability of many homeowners to meet their monthly mortgage payment obligations. For others, it may mean losing their homes altogether. This tum of events is not necessarily the result of entities other than the elected Assessors conducting property tax reassessments. Rather, it is the result of a shift in the tax burden to local homeowners from what has been referred to as "The Big Four" (United States Steel Corporation; Ispat Inland, Inc.; International Steel Group, Inc.; and BP Productions of North America, Inc.).

To be sure, the 2002 reassessment and the resulting shift in the property tax burden were not unanticipated. In a 1996 study commissioned by the then State Board of Tax Commissioners (now the Dep~rtment of Local Government

---

[2] For example, the property taxes of homeowners D.E. and N.E. increased from $2000 to $9000;homeowner M.F.'s tax obligation increased from $2400 to $5000; homeowner M.G.'s tax obligation increased from $1050 to $4320; homeowner B.H.'s tax obligation increased from $3756.48 to $11,460.08; homeowner E.R.'s tax obligation increased from $2706 to $9267.90; the taxes of homeowners K.S and D.S. increased from $1800 to $4600; and the taxes of homeowners S.W. and A.H. increased from $2700 to $15,089. R. at 55-61.

Finance, "DLGF"), researchers predicted that the adoption of a market value methodology for the assessment of real property, provided no other changes in the tax code were adopted, would result in an average statewide increase of 39% in tax obligations for residential property owners. 3 Appellants' App. at 10. That estimate was later adjusted to reflect an estimated 33% property tax payment increase statewide. Id. Notably, the researchers observed, "Lake and Crawford Counties stand out as having the highest residential tax shifts, 91.7% and 73.7%, respectively." Id. at 187. The reason for the estimated 91.7% tax shift in Lake County was apparently due in part to the business and residential "multipliers" used in the formula for determining market value assessments. Both multipliers were higher in Lake County than in any other county in the State of Indiana. With respect to the accuracy of these multipliers, the researchers concluded:

> If anything, the business multiplier used in the baseline scenario overstates the actual business multiplier in Lake County. Replacing the multipliers used in our analysis with the multipliers [relied upon by the State experts' assessment] would reduce the homeowner shift in Lake County from 91.7% to 76.4%, which still would be the highest shift among Indiana counties.

Id. at 187-88.

The record before us is silent regarding whether and to what extent the DLGF took into account the results of its study and the researchers' observations as it began to craft a property assessment scheme that more accurately measures property wealth. Equally important, the record does not reveal the formulae or methodology used by the DLGF to assess the value of the real property holdings of the "Big Four."[3] We do know that the reassessments resulted in tax shifts among some Lake County homeowners far in excess of those predicted by the researchers. We also know the "Big Four" were provided with "special rules for the assessment and taxation of industrial facilities "Indiana Code § 6-1.1-8.5-13. The fact that special rules were fashioned for industrial facilities coupled with the lack of any indication the DLGF relied on its own study to develop the new property assessment system is significant in my view because not only the assessed values of properties, but also the tax rates at which properties are assessed, may be affected by who conducts the assessments and under what rules the properties are assessed.

Having made the foregoing observations, I nonetheless agree with the majority that injunctive relief is not an available remedy in this instance. And I do so largely based upon the reasons the majority explains. However, the majority has declared, on the basis of curative legislation, that "the 2002 reassessment is *valid* subject to any *individual errors in the assessment* that are determined in the normal review process." Slip op. at 21 (emphasis added). Not only is the majority's "curative legislation" analysis not applicable in this case, but also by using this vehicle to validate the 2002 assessments, the majority forecloses the most potent argument available to homeowners entitling them to administrative relief, namely:

---

[3] There are three accepted methods by which to determine the value of real property: the cost approach, the sales comparison approach, and the income approach. "All three of these approaches, when properly processed, should produce *approximately* the same estimate of value." See State Board of Tax Commissioners, 2002 Real Property Assessment Manual at 3 (2002), available at http://www.in.gov/dlgf/reassessment/approved-manuals/index.html (emphasis added).

because the assessment statutes are unconstitutional, the taxes collected pursuant to the statutes are illegal as a matter of law.

A. Curative Legislation

First, although the Legislature certainly has the authority to enact curative legislation, there is nothing in the text of the statute to suggest the Legislature intended section 35 to serve that function. By specifically declaring that section 35 applied to a county "other than a county subject to section 32 [Lake County]" it is clear-section 35 was intended as an exception to section 32 not a "cure" of any perceived constitutional infirmity.

Second, to say that the "DLGF was thus authorized by the 2004 legislation to do substantially the same things in Lake County that were in fact done under the color of section 32," slip op. at 17, is simply not supported by the language of the statute. Section 32 as it existed in 2002 specifically dictated that Lake County assessors "may not appraise property, or have property appraised " The only duty of the local assessors was "to provide [the DLGF] or [the DLGF's] contractor.., any support and information requested by the [DLGF] or the contractor." Id--~. By contrast, under the 2004 legislation there is no absolute prohibition placed on local assessors from conducting reassessments. Rather, the DLGF "may order a state conducted reassessment in the county" if it determines a reassessment is necessary. I.C. § 6-1.1-4-35(e). Even then, provided the local assessors act before the DLGF orders a state conducted reassessment, the local may "enter into a contract with a professional appraising firm to conduct a reassessment " I.C. § 6-1.1-4-35(i). And that contract "is as valid as if it had been entered into by the [DLGF]; and [] shall be treated as the contract of the [DLGF]." Id. In essence, the newly enacted statute, which supposedly applies statewide, essentially gives local assessors an "opt-out" provision. Nothing resembling such a provision exists in the Lake County-only statute. Thus, while it is true the DLGF may order a statewide reassessment under section 35, it does not have carte blanche authority to conduct the reassessment itself or to hire contractors for that purpose. Rather, unlike section 32, under section 35 local Assessors still play a significant role in the assessment of local property.

Finally, and perhaps most importantly, section 35 certainly has not "cured" the constitutionally defective I.C. § 6-1.1-8.5-1 et seq. This statute, which has undergone no substantial revision since its enactment, provides "special rules" for the assessment of the "Big Four." And the assessments conducted under this statute apparently have been the greatest contributor to the significant tax increases for homeowners in Lake County. A DLGF ordered reassessment of property today could not include this Lake County-only provision. In sum, the doctrine of curative legislation saves neither I.C. § 6-1.1-4-32 nor I.C. § 6-1.1-8.5-1 et seq.

B. Available Remedies

Indiana Code § 6-1.1-15-1 et seq. sets forth the procedures for review and appeal of property tax assessments. Among other things, a taxpayer may file a Form 133 Petition to request a correction of errors for one or more of the following reasons:

(1) The description of the real property was in error.

(2) The assessment was against the wrong person.

(3) Taxes on the same property were charged more than one (1) time in the same year.

(4) There was a mathematical error in computing the taxes or penalties on the taxes.

(5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.

(6) The taxes, as a matter of law, were illegal.

(7) There was a mathematical error in computing an assessment.

(8) Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

I.C. § 6-1.1-15-12(a).

Even though injunction may not be an available remedy, the fact remains that the property taxes imposed in this case are based on unconstitutional reassessment statutes. "An unconstitutional act is not law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." State v. Steinwedel, 203 Ind. 457, 180 N.E.2d 865, 867 (1932). Consequently, the property taxes assessed pursuant to these unconstitutional statutes are illegal "as a matter of law." See I.C. § 6-1.1-15-12(a)(6). It is on this ground that the homeowners here should be entitled to relief. And the relief should entail payment of property taxes due and owing based on the preexisting assessments with appropriate refunds for all or a portion of tax installments already paid under the 2002 assessments. See I.C. § 6-1.1-26-1(4)(B). In the meantime there is nothing to prohibit DLGF from ordering a State conducted reassessment under the provisions of Indiana Code § 6-1.1-4-35 enacted in 2004.

The majority suggests that homeowners have an available remedy under the authority of Department of Local Gov't Fin. v. Commonwealth Edison Co. of Ind.,N.E.2d (No. 49S10-0307-TA-293) (Ind. Jan. 13, 2005). However, it appears to me that Commonwealth Edison must be read in conjunction with Lake County Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp.,-- N.E.2d . _(No. 49S10-0309-TA-400) (Ind. Jan. 13, 2005). And as I read BP Amoco, only if at least one taxpayer has already timely filed a Form 130 petition challenging the methodology used in generating the 2002 Lake County assessments, and only if through the administrative review process there is a determination that the taxpayer is entitled to relief, then and only then may the homeowners in this case possibly be afforded relief by filing Form 133 petitions. Id--~. at slip op. 8-9.

In sum, as I understand the majority's position, although the taxes in this case were assessed under unconstitutional assessment statutes, that fact alone has no practical consequence. Rather, in order to obtain relief, homeowners must advance an argument independent of the statutes' unconstitutionality. I cannot endorse this view. It is small comfort to these homeowners for the Court to declare in one breath that the challenged statutes constitute unconstitutional special legislation, a proposition with which I agree, and in the next breath declare the fianctional equivalent of "so what." Accordingly, I respectfully dissent from Part III of the majority opinion. In all other respects I concur.

CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT

STATE OF INDIANA

217 STATE HOUSE, INDIANAPOLIS, IN 46204

HAROLD ABRAHMSON
200 RUSSELL STREET
HAMMOND, IN 46320-1818

STATE OF INDIANA EX REL. THE ATTORNEY GENERAL -V- LAKE SUP.

You are hereby notified that the SUPREME COURT has on this day 3/15/05

APPELLEES' PETITION FOR REHEARING IS HEREBY DENIED, WITHOUT OPINION.

RANDALL T. SHEPARD, CHIEF JUSTICE

SHEPARD, C.J., AND DICKSON, SULLIVAN AND BOEHM, JJ., CONCUR.

RUCKER, J., VOTES TO GRANT REHEARING.

/s/ Clerk, Supreme Court, Court of
Appeals and Tax Court

IN THE INDIANA SUPREME COURT

STATE OF INDIANA ex rel.)
THE ATTORNEY GENERAL of the)
STATE OF INDIANA,)
Relator,)
)
V.)
)
THE LAKE SUPERIOR COURT and)
THEHONORABLE ROBERT PETE,)
AS JUDGE THEREOF,)
Respondents.)

GOVERNOR OF THE STATE OF)
INDIANA, et al.,)
Appellants,)
)
v.)
)
MILLER CITIZENS CORPORATION,)
et al.,)
Appellees,)

ORDER

These two matters are pending before the Court upon the State of Indiana's petition for writ of mandamus and prohibition under the rules governing original actions and upon the State's notice of appeal filed on May 12, 2004. Briefing has occurred on the original action, which the Court has under advisement.

As an exercise of its power to issue writs in aid of its jurisdiction under Indiana Appellate Rule 4(B)(4), the Court directs as follows. The Court hereby STAYS the judgment of the Lake Superior Court entered on May 7, 2004, in the matter below, Don andMary Engel, et al. v. Governor of the State of Zndiana, et al., No. 45D05-0404-PL-91, which granted the Appellee's injunctive and declaratory relief. To clarify, the effect of this stay is that the Treasurer of Lake County is not enjoined from mailing the new tax bills based upon the CLT assessment.

The Court directs expedited briefing in the appeal to proceed as follows. The brief of Appellant(s) is due to be filed by June 7, 2004. The Court directs that the parties address in their briefs not only any issue of jurisdiction raised in this case, but also the constitutionality of the statutes that were declared unconstitutional by the trial court. Any briefs of Appellees will be due to be filed by June 14, 2004. The Court expects to receive no more than two briefs of Appellees and encourages any Appellees to consult with each other to ensure that no more than two consolidated briefs of Appellees are filed. Any reply brief is due to be filed by June 17, 2004. Said briefs shall be physically on file with the Clerk of Courts and served upon other parties personally by the due dates indicated.

No extensions of time to file briefs will be allowed. No exceptions from the page and word limits imposed by the Appellate Rules will be allowed.

Parties may cite to the Record of Proceedings and Transcript already filed in the original action. Any brief filed may also be accompanied by a supplemental appendix containing other record materials that the party or parties filing it believe is necessary for the Court's consideration of the appeal.

Oral argument is scheduled in the appeal on Wednesday, June 23, 201)4, at 9:00 a.m., at the Courtroom of the Indiana Supreme Court, 317 Statehouse, 200 W. Washington St., Indianapolis, IN. The argument will be 60 minutes in length, with the Appellants allocated 30 minutes and the Appellees allocated 30 minutes. Appellants shall divide their time amongst themselves as they decide is appropriate, and Appellees shall divide their time amongst themselves as they decide is appropriate. The Appellants shall open the argument and will be given the opportunity to reserve a portion of their time for rebuttal.

The Clerk is directed to enter this order under both of the case numbers listed above.

The Clerk is directed to send copies of this order to the Honorable Robert Pete, Judge; Lake Superior Court; to the Attorney General of Indiana, and to all other persons who are listed in the certificate of service on page 7 of the petition for writ of mandamus and prohibition or who have entered their appearance or are otherwise listed as counsel in the original action or the appeal.

Done at Indianapolis, Indiana this 27th day of May, 2004.

/s/ Randall T. Shepard
Chief Justice of Indiana

All Justices concur.

IN THE INDIANA SUPREME COURT

GOVERNOR OF THE)
STATE OF INDIANA,)
etal.,)
)
Appellants,)
)
v.) No. 45S00-0405-C V-224
)
MILLER CITIZENS)
CORPORATION, er ci.,)
)
)
Appellees.)

ORDER

On June 22, 2004, Appellants filed a one-volume Supplemental Appendix II-A. Along with it, Appellants filed a Notice of Update, explaining that the Supplemental Appendix Il-A contains an updated version of a study that was cited in their Brief of Appellants arid contained in their previously filed Supplemental Appendix.

On June 25, 2004, the Appellees, Miller Citizens Corporation, et al., by counsel, filed their "Motion to Strike 'Supplemental Appendix Il-A' Filed with the Court June 22, 2004," and the Court took that motion to strike under advisement.

The Court has handed down an opinion today in this appeal. The opinion does not rely upon th.e study contained in Appellants' Supplemental Appendix Il-A. Therefore, the Appellees' motion to strike is MOOT and requires no ruling, Done at Indianapolis, Indiana this 13th day of January, 2005.

/s/ Randall T. Shepard.
Chief Justice of Indiana

IN THE
SUPREME COURT OF INDIANA
CASE NO. 45S00-0405-OR-204
-and-45S00-0405-CV-224

STATE OF INDIANA OF TItE)
RELATION of the ATTOttNEY)
GENERAL of the STATE OF)
INDIANA,)
)
Relator,) Superior Court
vs.) of Lake County
) Cause No.
THE SUPERIOR COURT OF LAKE) 45D05-0404-PL-91
COUNTY AND THE HONOICABLE)
ROBERT A. PETE,) Hon. Robert. A.
AS JUDGE THEREOF,) Pete, Judge
)
Respondents.)

GOVERNOR OF THE STATE OF)
INDIANA, ET AL.,)
)
Respondents (Defendants below))
)
vs.)
)
MILLER CITIZENS CORPORATION)
ET AL.,)
)
Petitioners (Plaintiffs below).)

CONSOLIDATED PETITIONS FOR REHEARING ON PETITION FOR WRIT OF MANDAMUS AND PROHIBITION AN]) DIRECT APPEAL

Kenneth D. Reed, 5942-45
Harold Abrahamson, 2322-45
John P. Reed, 20328-45
Abrahamson, Reed & Bitse
200 Russell Street, Suite 200
Hammond, IN 46320

Robert G. Berger, 2701-45
3912 Highway Avenue
Highland, IN 46322
Attorney for Hammond City Council

Of counsel:
James W. Martin
8585 Broadway, Suite 660
Merriville, IN 46410

Joseph Allegretti
6920 Hohman Avenue
Hammond, IN 46324
Attorney for East Chicago
City Council

Douglas Grimes
6941 Ironwood
Gary, IN 46410

Gregory S. Reising
607 S. Lake Street, Suite A
Gary, IN 46403

Attorneys for Miller
Citizens Corporation

TABLE OF CONTENTS

I. TABLE OF AUTHORITIES
II. STATEMENT OF ISSUES
  A. Whether This Court Erred In Its Decision Not To Void The Results Of The Lake County Reassessments Performed Under Unconstitutional Indiana Code Sections 6-1.1-8.5 Et Seq. And 6-1.1-4-32, Which Has Operated To Violate Plaintiffs' Right To Equal Protection Under The Fourteenth Amendment To The United States Constitution.
  B. Whether This Court's Decision To Dismiss Thq Petitioners' Case Lack Of Jurisdiction Is Erroneous, Constituting A Violation Of The Plaintiffs' Right To Due Process Under The Fourteenth Amendment To The United States Constitution.
  C. Whether This Court's Decision Not To Void The Unconstitutional And Uncoordinated 2002 Reassessment Of Real Property In Lake County, Conducted By Cole-Layer-Trumble, Is Erroneous And Thus Violates The Right Of Lake Count Voters, And Its Townships' Voters, To Have Had That Reassessment Conducted By Their Democratically-Elected Assessor, In Violation Of The Federal Voting Rights Act (42 U.S.C. §1971)
  D. Whether There Was Justification For The Special Litigation Of 2001, Under Ind. Const. Article IV §23; And Whether The 2004 Legislation "Cured" The Constitutional Defect Of The 2001 Legislation, Under Ind. Const. Article IV §22.

III. ARGUMENT
  A. This Court Decision Not To Avoid The Unconstitutional Result Of Special Legislation In Indiana

Code Sections 6-1.1-8.5 Et Seq. And 6-1.1-4-32, Has Resulted In A Violation Of Plaintiff's Right To Equal Protection Of The Law Under The Fourteenth Amendment To The United States Constitution.

B. This Court's Decision To Dismiss The Petitioner's Case For Lack Of Jurisdiction Is Erroneous, Thus Constitutes A Violation Of The Plaintiff's Right To Due Process Of Law Guaranteed By The Fourteenth Amendment To The United States Constitution.

C. This Court's Decision Not To Allow The State, Through Its Department Of Local Government Finance, And A Private Contractor, To Conduct The Lake County Reassessment Has Operated To Eradicate The Rights Of Voters In Lake County To Democratically Elect Township Assessors.

D. There was no substantial historical justification for the 2001 special legislation, under the Ind. Const. Article IV §23; and the 2004 legislation did not cure the Constitutional defect, under Ind. Const. Article IV §22.

IV. Conclusion

TABLE OF AUTHORITIES

Case Law

Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia, 488 U.S. 336,343 (1989)
Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526-527 (1959)
Bellamy v. Oillis, 722 N.E.2d 905 (Jind.Ct.App. 2000)
Boehra v. Town of St. John, 675 N.E.2d 3i8,324 (Ind. 1996)
Brinkerhoff-Farris Trust Co. v. Hill, 281 U.S. 673,677-78 (1930)
Brzonkala v. Virginia Polytechnic Institute and State University, 169 F.3d 820, 895 (4th Cir. 1999).
Burk v. Bolerjack, 427 N.E.2d 887, 890 (Ind. 1981)
City of Los Angeles v. David, 358 U.S. 715 (1976)
City of South Bend v. Kimsey, 781 N.E.2d 683 (Ind. 2003)
Cumberland Coat Co. v. Board of Revision, 284 U.S. 23, 25 (1931)
Elmer Buchta Trucking, Inc. v. Stanley, 744 N.E.2d 939, 942 (Ind. 2001)
Hillsborough v. Cromwell, 326 U.S.620, 623 (1946)
Kelly v. United States, 69 F.3d 1503 (10th Cir. 1995)
Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)
Matonovich v. State Tax Board, 705 N.E.2d 1093 (Ind.TaxCt. 1999)

New Jersey v. United States, 91 F3d 463,468-69 (3rd Cir. 1996)
New York v. United States, 505 U.S. 144, 183 (1992)
Rambo v. Cohen, 587 N.E.2d 140, 144 (Ind.Ct.App. 1992)
State Board of Tax Commissioners v. Town of St. John, 702 NE.2d 1034 (Ind. 1998)
State v. Sproles., 672 N.E.2d 1353
Texas v. United States, 106 F.3d 661,667 (5th Cir. 1997)

Statutes, Constitutions & Court Rules
42 U.S.C. §1971
Ind. Const. Art. X § 1 (a)
Article IV of the United States Constitution Indiana Codes 6-1.1-4-32 and 6-1.1-.8-5 et seq. Indiana Code 6-1.1-4:35(a) Indiana Constitution, Article IV, §§ 22 and 23 Indiana Constitution, Article X § 1 (a)
United States Constitution Art. VI cl. 2
U.S. CONST. Amend. XIV, § 1
Indiana Appellate Rule 54

PETITION FOR REHEARING

Come now Appellees-Respondents as Petitioners herein, and respectfully petition the Court for Rehearing of its decision and opinion of January 13, 2005, reversing the judgment of the trial court, and ordering petitioners' case dismissed, all pursuant to Ind. App. Rule 54, for the reason that said decision and opinion are believed to be erroneous, and in violation of petitioners' rights under the Fourteenth Amendment to the Constitution of the United States, in the following particulars, to wit:

STATEMENT OF ISSUES

A. Whether This Court Erred In Its Decision Not To Void The Results Of The Lake County Reassessments Performed Under Unconstitutional Indiana Code Sections 6-1.1-8.5 Et Seq. And 6-1.1-4-32, Which Decision Has Operated To Violate Plaintiffs' Right To Equal Protection Of The Law Under The Fourteenth Amendment To The United States Constitution.

B. Whether This Court's Decision To Dismiss The Petitioners' Case For Lack Of Jurisdiction Is Erroneous, This Constituting A Violation Of The Plaintiffs' Right To Due Process Of Law Under The Fourteenth Amendment To The United States Constitution.

C. Whether This Court's Decision Not To Void The Unconstitutional And Uncoordinated 2002 Reassessment Of Real Property In Lake County, Conducted By The Appointed Department Of Local Govertmaent Finance And Its Private Contractor, Cole-Layer-Trumble, Is Erroneous And Thus Violates The Right Of Lake Count Voters, And Its Townships' Voters, To Have Had .That Reassessment Conducted By Their o Democratically-Elected Assessor, In Violation Of The Federal Voting Rights Act (42 U.S.C.

§1971)

D. Whether There Was Justification For The Special Litigation Of 2001, Under Ind. Const. Article IV §23; And Whether The 2004 Legislation "Cured" The Constitutional Defect Of The 2001 Legislation, Under Ind. Const. Article IV §22.

ARGUMENT

A. THIS COURT'S DECISION NOT TO VOID THE UNCONSTITUTIONAL RESULT OF SPECIAL LEGISLATION IN INDIANA CODE SECTIONS 6-1.1-8.5 ET SEQ. AND 6-1.1-4-32, HAS RESULTED IN A VIOLATION OF PLAINTIFFS' RIGHT TO EQUAL PROTECTION OF THE LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITE?[) STATES CONSTITUTION.

The equal protection clause of the Fourteenth amendment provides: "No State shall *** deny to any person within its jurisdiction the equal protection of the laws". The Supreme Court has long recognized that the "equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him .nut for discr~iminatory treatment by subjecting him to taxes not imposed on others of the same class." Hillsborough v. Cromwell, 326 U.S.620,.623 (t946).

This Court's decision not to void the unconstitutional selective reassessment of Lake County real property in 2003, is erroneous and has resulted in a violation of the petitioners' rights under the Equal Protection Clause of the Fourteenth Amendment. These federal issues were not previously addressed because they arose only as a result of the court's opinion and decision of January 13, 2005, from which this petition seeks relief. See Brinkerhoff-Farris Trust Co. v. Hill, 281. U.S. 673, 677-78 (1930). The petitioners relied on the judicial department to enforce the provisions of the Indiana Constitution which prohibit special legislation. Indiana Constitution Art. IV §§ 22 and 23. This decision upholds Indiana's Constitutional ban on special legislation applying only to one certain county, consistent with existing case law in the State. See City of South Bend v. Kimsey, 781 N.E.2d 683 (Ind. 2003), and expressed in Indiana Constitution, Art. IV, §§ 22 and 23. However, the court also ruled that the selective reassessment of Lake County real property, and the tax imposition results under that special legislation were not void, but rather, would be allowed to stand. Petitioners believe that this determination is erroneous, and, as such, violates petitioners' rights to equal protection under the Fourteenth Amendment to the United States Constitution.

Discriminatory treatment can inhere not only in disparate taxation rates, but also in disparate methods of assessment. The Supreme Court of the United States has held that disparate taxation is "internal and systematic", and thus in violation of the Fourteenth Amendment, when clearly disparate assessments are "made pursuant to a deliberately adopted system" and result not from possible errors in judgment, but from the system itself. Cumberland Coat Co. v. Board of Revision 284 U.S. 23, 25 (1931). The command of the Equal Protection Clause is that those who are similarly situated be treated similarly. Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526-527 (1959). The Equal Protection Clause tolerates occasional errors of state law or mistake in judgment when valuing property for tax purposes. Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia, 488 U.S. 336,343 (1989). The States may also divide different kinds of property into classes and assign to each class a different tax burden so long as the selection or classification, is neither arbitrary nor capricious and rests upon some reasonable consideration of difference or policy. Id. at 344. In this instance, there is no valid reason or justification for not relieving Lake County property owners from the consequences of an unconstitutional reassessment.

This Court stated, "without a showing that the substantive results reached by the reassessment are incorrect, we will not indulge the assumption that local officials would arrive at different results."[1] (Opinion pp. 15-16). Indiana State law draws no class or county-by-county distinction among property for purposes of appraisal or assessment. As a matter of law, the Indiana Constitution mandates a system of uniformity and equality. See Indiana Constitution, Art. X § l(a). Further, this is not a case involving any question of the.exercise of judgment by an assessor (democratically elected, appointed, or contracted), or any question of good faith mistake in a particular valuation decision. The petitioners are not suggesting that this Court set itself up as a Board of Review to second-guess the judgment of assessors.

The majority of the Indiana Supreme Court accepted the clear, unambiguous language and perfectly constitutional command of §22 of Art. IV of the Indiana Constitution; but then declined to act on that determination. Such unwarranted treatment of the State Constitutional protections undermines government by consent, which is the essence of the guarantee of Republican government. This case mainly turns on legal principles. There is no question that the challenged assessments were made pursuant to a deliberately adopted system. As the U.S. Supreme Court stated in Cumberland Coat Co. v. Board of Revision, 284 U.S. 23, 25 (1931), "this case is not one of mere errors in judgment following a proper method, but one where the challenged discrimination resulted from a plan of assessment which was none the less systematic and intentional because of belief in its validity".

Further, this Court seems to have eschewed a key restriction of the judicial rule that it has in the past repeatedly applied: Where the language of a statute (in this case I.C. 6-1.1-4-35(a) is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself. Elmer Buchta Trnckin~, Inc. v. Stanley, 744 N.E.2d 939, 942 (Ind. 2001). Indeed, as this Court has noted, it is not the prerogative of the Court to vary from the plain meaning of the unambiguous terms employed by the General Assembly. Burk v. Bolerjack, 427 N.E.2d 887, 890 (Ind. 1981).

---

[1] This-finding is addressed in detail in Section "C" of this Petition.

The majority's decision not to void the Lake County reassessment for the tax year 2002, and following, is clearly incorrect because the petitioners possess federally protected rights that are not dependent on the varying and shifting interpretations of state constitutional law for their safeguard and protection. Supremacy principles prevent a state court from employing state constitutional provisions to defeat federal constitutional rights to equal protection. United States Constitution Art. VI cl. 2. The disparity did not result from an error in judgment or the exercise of discretion; it resulted from a discriminatory plan thereby violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Had this Court voided the 2002 reassessment of Lake County real property, petitioners' rights under the Fourteenth Amendment would be preserved.

B. THIS COURT'S DECISION TO DISMISS TIIE PETITIONER'S CASE FOR LACK OF JURISDICTION IS EI.~RONEOUS, AND CONSTITUTES A VIOLATION OF TIIE PLAINTIFF'S RIGHT TO DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT %0 THE UNITED STATES CONSTITUTION.

The Fourteenth Amendment to the United States Constitution, at § 1, states, in pertinent part, as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

> citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. CONST. Amend. XIV, § 1.

In the 2003 case of City of Los Angeles v. David, 358 U.S. 715, 716-717, the United States Supreme Court, reaffirmed the test for determining whether the safeguards of procedural due process have been met, by reiterating its three (3) pronged test first formulated in 1976, stating as follows:

> "In Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), the Court set forth three factors that normally determine whether an. individual has received the "process" that the Constitution finds "due": "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."
>
> "By weighing these concems, courts can determine whether a State has met the "fundamental requirement of due. process"--"the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " Id., at 3337 96 S.Ct. 893."

The decision from which the petitioners seek relief holds that the petitioners failed to first exhaust their administrative remedies before proceeding to court action. (Opinion, at page 8). The Court cited State v. Sproles, 672 N.E.2d 1353, and essentially held that, regardless of the futility of attempting to have a purely constitutional issue promptly resolved by a State Board, the petitioner is required to present those constitutional arguments first to the State Board. This rule is to be applied regardless of substantial delay in getting to the Supreme Court, and the thousands of separate appeals required. The Board of Review is an executive body, which has neither the jurisdiction nor the authority to decide an issue of the constitutionality of state statutes. It is fundamentally unfair for the State to insist that its citizens and. taxpayers exhaust administrative remedies; without first providing administrative remedies that are fair and effective. One cannot be expected to pnrsue administrative procedures which are incapable of providing effective relief in a timely fashion; particularly where the taxpayers' complaint is based upon the effects of unconstitutional statutes and the administrative body has no authority to deal with that issue, and, by its own admission, lacks the resources to reasonably address tens of thousands of taxpayers' complaints.[2] It is a denial of due process for the State to insist upon exhaustion where the process provided, and required, cannot, for the reasons previously stated, produce the justice sought. (Bellamy v. Gillis, 722 N.E.2d 905 (Ind.Ct.App.2000); Rambo v. Cohen., 587 N.E.2d 140, 144 (Ind. Ct.App. 1992).

The first prong of the test used to determine whether the safeguards of procedural due process have been met, announced by the United States Supreme Court, in Mathews v. Eldridge, is to determine the nature and importance of "the private interest that will be affected by the official action." 424 U.S. 319, 335, 96 (1976). In the instant case, the private interest is the interest of virtually every taxpayer owning property in Lal~e County who has an obvious private financial interest in the constitutionality of the process used in assessing the value of their property for tax purposes. Many Lake County property owners will lose their property equity and their life savings. The special legislation reassessments of 2003 for the tax year 2002 are completed, and the improper assessments resulting therefrom linger on.

---

[2] The affidavit of Betsy Brand is in the Record at Relator-Appellant's Appendix, Volume 1, Exhibit B.

The second prong of the test is to determine "the risk of an erroneous deprivation of such interest through the procedures used, and the probable val~ae, if any, of additional or substitute procedural safeguards." I?d?d. In the instant case, this Court has held that the petitioners must avail themselves of an administrative process before a Board that was without jurisdiction or authority to decide the ultimate issue presented: the constitutionality of Indiana Code §§ 6-1.1-4-32 and 6-1.1-8-5 et seq. The appeal of any State Board decision to the Indiana Tax Court, would not have provided the expediency of justice necessary to prevent the evil resulting from the unconstitutional statutes. Even the State Tax Court's ultimate decision is not final. The mailing of the second half 2002, pay 2003 tax bills, and their receipt by mortgagees and property owners, has started the downward spiral of increased mortgage escrow payments, inappropriately large direct tax payments, dramatically reduced home values, and general panic throughout most of Lake County.

Lastly, the third prong of the test is to weigh "the Government's interest, including the function involved, and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." I??4d. The additional safeguard would have provided no relief, due to its lack of expediency, to the petitioners. And, neither the state nor local government benefits from the delay in reaching a decision on the constitutional question.

Therefore, weighing these concerns, the State has not met the "fundamental requirement of due process"--"the opportunity to be heard 'at a mel~ningful time and in a meaningful manner.'" City of Los Angeles v. David, 538 U.S. 715, 716-717 (2003) (citing Mathews v. Eldridge, 424 U.S. 319, 333 (1976))(emphasis added).

C. THIS COURT'S DECISION TO ALLOW THE STATE, THROUGH ITS DEPARTMENT OF LOCAL GOVERNMENT FINANCE, AND A PRIVATE CONTRACTOR, TO CONDUCT THE LAKE COUNTY REASSESSMENT HAS OPERATED TO ERADICATE THE RIGHTS OF VOTERS IN LAKE COUNTY TO DEMOCRATICALLY ELECT A TOWNSHIP ASSESSOR WHOSE STATUTORY DUTY WAS TO CONDUCT SUCH REASSESSMENTS.

The Court opinion and decision violate the Republican Guarantee Clause of Art. IV of the United States Constitution by not allowing Lake County to be assessed by their publicly elected assessors. Art. IV section 4 of the U.S. Constitution provides that "The United States shall guarantee to every State in the Union a Republican form of government". Although claims premised on the Republican Guarantee Clause have in the past been viewed as nonjusticable in most instances, Justice O'Conner noted in New York v. United States "that perhaps not all claims under the Guarantee Clause present nonjusticable political questions." 505 U.S. 144, 183 (1992). Indeed, this case presents circumstances where the Republican Guarantee claim is viable. The essence of the Republican Guarantee is the right of a State's citizen's to "structure their goverm-nent as they see fit". Kelly v. United States, 69 F.3d 1503 (10th Cir. 1995). In New York, the Court dismissed the Guarantee Clause claim only because the statute in that case did r~ot "pose any realistic risk of altering the form or method of functioning of New York's goverim~ent." 505 U.S. at 186. But here, the Indiana Supreme Court's decision has already done just that. Lake County's assessments were not performed by their publicly elected assessors, a fact unique to Lake County. Many courts have already recognized that this clause is viable for claims of structural constitutional violations. See Texas v. United States, 106 F.3d 661,667 (5th 'Cir. 1997); New Jersey v. United States, 91.F3d 463, ~468-69 (3rd Cir. 1996); Brzonkala v.Virginia Polytechnic Institute and State University, 169 F.3d 820, 895 (4th Cir. 1999)..The decision also violates the Federal Voting Rights Act. (42 U.S.C. § 1971)

There is a disregard for the most objectionable aspect of the unconstitutional reassessment. This Court variously observed that: (a) the taxpayers didn't seek relief in The Board of Tax Review; (b) the taxpayers waited too long to challenge the statutes; (c) the reassessment was a ~zero sum gauge for all affected property owners in tl~.e affected area"; (d) the increased taxes just rectify historical under-taxation; and (e) that taxpayers never claimed that their reassessments were inaccurate.

The resulting harms have to do entirely with the **timing** of the reassessments, **and the dual personnel conducting them**. The Cole-Layer-Trumble reassessment was done in the fall of 2003. Some complained, but most people looked around at their neighbors and saw a change upward, but in proportion to the value their houses bore to their neighbors houses. They also saw, generally, a correlation in the reassessed values to fair market value, Why appeal? But what they could not know or anticipate was that a separate reassessmeat of The Big Four would not be completed until February 28, 2004, when the Department of Local Government Finance finally flied its Final Determination(s) as to The Big Four, with the County. No one outside of the Department of Local Government Finance could foresee that these reassessments would lower The Big Four assessments by 52%, at the end of February, 2004. Even then, the County denies getting notice of those final determinations. And, the contemplated notice to taxpayers was never given. (I.C. 6-1.1-8.5-I 1) Not until this point in time Could it possibly be known by the rest of the Lake County taxpayers (primarily in the populous northern parts of Lake County) that their tax burdens would increase geometrically in order to offset the loss of 52% of the taxes which quite suddenly would no longer be paid by The Big Four. The petitioners acted very promptly and filed suit on April 29, 2004. It was too late for them to appeal the reassessments to Cole-Layer-Trumble, which was a condition precedent to proceeding to The Board of Review. They were effectively "mouse-trapped". The horror of the bifurcated and uncoordinated reassessments, one by Cole-Layer-Trumble, and a later one by the Department of Local G-over~m~ent Finance, could not have occurred had those reassessments been done by the duly elected Township Assessors.

Finally, and perhaps most ironically and tragically, the minute the Department of Local Govermment Finance made its Final Determination(s), the vast majority of the Cole-Layer-Trumble reassessments were rendered obsolete and probably illegal and unconstitutional under Ind. Const. Art. X § l(a). The Cole-Layer-Trumble assessments necessarily took into account the existing tax on a particular property; at the time the valuations were performed; and not the geometric increase in those tax burdens resulting from the dramatic decrease in the reassessments of The Big Four. No one would pay as much for a given house or business with a tax bill of $10,000 per year as tl~ey would pay for the same house with a tax burden of $2,000 per year. Hence, the Cole-Layer-Trumble reassessments based on the tax burden in the fall of 2003, could not possibly continue to be accurate under the huge tax burden shift which occurred at the end of February, 2004.

D. THERE WAS NO SUBSTANTIAL HISTORICAL JUSTIFICATION FOR THE 2001 SPECIAL LEGISLATION, UNDER THE IND. CONST. ARTICLE IV §23; AND THE 2004 LEGISLATION DID NOT CURE THE CONSTITUTIONAL DEFECT, UNDER IND. CONST. ARTICLE IV §22.

In 1996, Justice Dickson speaking for the Court, held that the Tax Court lacked jurisdiction to mandate a statewide reassessment based on fair market values, even though the then current system for determining "true tax value" did not meet the requirements of Ind. Const. Art. X, § 1(a). Boehm vs. Town of St. John, 675 N.E.2d 8 (Ind. 1996).

On December 4, 1998, this Court held that the entire State had to be reassessed by a method which would produce results consistent with Ind. Const. Art. X, § 1(a); even if that meant resorting to fhir market value, in use, standards. State Board of Tax Comm'rs. vs. Town of St. John, 702 N.E.2d 1634 (Ind. 1998).

The State Tax Board then proposed that it would reassess all property in Lake County, but that proposal was rejected by the Tax Court in Matonovich vs. State Bd. of Tax Comm'rs., 705 N.E.2d 1093 (Ind.TaxCt. 1999).

The Court indicates that there was some justification for the Special Lake County legislation and, by implication, justification for the State Tax Board's quest to internally reassess Lake County, by reason of: (1) a need to get even for years of underassessment of everyone except the Big Four (Op. p. 6, 7); (2) a "troubled history of property taxation" (Op. p. 11); (3) a "long and tortured history of property taxation" (Op. p. 13); (4) findings of the State Tax Board concerning widespread underassessment (Op. pp. 13 and 14); (5) unique circumstances created by uneven assessment practices (Op. p. 14); (6) long history of systematic underassessment (Op. p. 15); and (7) long and troubled Lake County assessment history (Op. pp. 16, 17).

The problem is that there is no substantial evidence to support those conclusions. The Matonivich case cited by the Court shows that only Lake County was %tudied". This Court has officially held that the lack of uniformity and equality of assessments was a state-wide problem, and was, ironically, the product of the State Tax Board's own manuals and processes which violated Ind. Const. Art. X, § l(a). State Board of Tax Comm'rs. vs. Town of St. John, 702 N.E.2d 1034 (Ind. 1998); and Boehm v. Town of St. John, 675 N.E.2d 318, 324 (Ind. 1996).

The provisions of the 2001 statutes were mandatory, whereas the provisions of the 2004 statutes are discretionary with the DLGF. (Both are exactly what the DLGF pursued).

At page 13 of the January 13, 2005 opt.talon, the C~urt finds that the statutes are special laws prohibited by § 22 of Art. IV, concerning assessment of property. However, the Court says that doesn't invalidate those statutes for the reasons expressed in Opinion part 111. (2004 Cm'ative Legislation).

It is respectfully submitted that the Court's ruling that the Art. IV, § 22 defect in the 2001 Lake County reassessment statutes was "cured" by the enactment of a 2004 reassessment statute is erroneous, and violates petitioners' rights guaranteed by the U. S. Constitution.

The 2004 statute does not cure the horrendous consequences of the 2003 reassessment for tax year 2002, conducted pursuant to the 2001 reassessment statutes for the following reasons:

1. The 2003 reassessments will remain the assessments for several years; not just 2003;
2. The provisions of the 2001 statutes were mandatory, whereas the provisions of the 2004 statutes are discretionary with the DLFG. (Both are exactly what the DLFG pursued).
3. The 2004 statute does not indicate a legislative intent

that it be "curative", or applied retrospectively. Absent such legislative manifestation, all statutes operate prospectively.

4. The court lacked jurisdiction to construe the 2004 Act, inasmuch as there is no ambiguity, and there is no question of legislative intent.
5. Sec. 35 of the 2004 statute, excluding Lake County from the application of that Act, does not violate Art. IV, § 22, since it does not do anything obnoxious to Lake County, and it does not require that anything more be done in Lake County. It is, in essence, "non-legislation". Moreover, "two wrongs don't make a right", and one piece of unconstitutional legislation cannot cure another piece of unconstitutional legislation. And, the Court ruled that the 2001 statutes did not violate Ind. Const. Art. IV, § 23, because of what the Court decided 'were terrible assessment problems unique to .Lake Coun'cy, and justified a law that was not general. Well, that same logic would necessarily apply to § 35 of the 2004 Act.
6. Petitioners adopt Justice Rucker's view on the subject, expressed in the Justice's dissenting opinion. The 2004 Act does nothing to "cure" the "special rules" defect in the 2001 legislation pertaining to the Big Four.

CONCLUSION

The Court should grant rehearing, and the 2003 reassessment in Lake County should be voided.

Respectfully submitted,

By: __________________________

/s/ Kenneth D. Reed, Esq., 5942-45

____

/s/ Harold Abrahmson, Esq., 2322-45
ABRAHAMSON, REED & BILSE
200 Russell Street, Suite 200 Hammond, IN 46320

(219) 937-1500
(219) 937-1524 fax

/s/ Robert Berger, Esq., 2701-45
3912 Highway Avenue
Highland, IN 46322
(219) 838-7000
Attorney for Hammond City Council

/s/ Joseph P. Allegretti, Esq., 2360-45
6920 Hohman Avenue
Hammond, 1N 46320
(219) 937-3200
Attorney for East Chicago City Council

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2005, service of a true and complete copy of the foregoing pleading or paper was made upon all parties by depositing the same in the United States Mail in envelopes properly addressed to each of them and with sufficient first class postage affixed thereto.

Clerk
Supreme Court of Indiana
217 State House
200 W. Washington ~treet
Indianapolis, IN 46204

James W. Martin
8585 Broadway, Suite 660
Merrillville, IN 46410
David Suess
Thomas Atherton
135 N. Pennsylvania St., Suite 2700
Indianapolis, IN 46204

Michael V. Knight/Larry Stroble
600 First Source Bank Center
100 N. Michigan
South Bend, IN 46601

Douglas Grimes 6941 Ironwood Gary, 1N 46403
Kathleen A. Delaney
251 N. Illinois Street
Suite 980
Indianapolis, IN 46204

Gregory S. Reising
607 Lake Street, Suite A Gary, 1N 46403
John S. Dull
8300 Broadway, Suite G-1
Merrillville, IN 46410

Robert G. Berger
3912 Highway Avenue
Highland, IN 46322
George C. Patrick
706 Merrillville Rd.
Crown Point, IN 46307

Joseph Allegretti
6920 Hohman Avenue
Hammond, IN 46324

James Wieser
425 W. Lincoln Hwy.
Schererville, IN 46375
Joby Jerrells
Gary Damon Secrest
Office of Attorney General Indiana Government Cntr.
South 5th Floor
302 W.,Washington Street Indianapolis, IN 46204

Joseph Irak
Barrister Court
9219 Broadway
Merrillville, IN 46410
Terrence Austgen
9245 Calumet Avenue, Suite 200
Munster, IN 46321

Jeffrey T. Bermett
2700 Market Tower
10 W. Market Street
Indianapolis, IN 46402

Booker Blumenburg, Jr.
Calumet Township Assessor
501 E.5th Avenue
Gary, IN 46402

Francina A. Dlouhly
James Ham, III
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204

VERIFIED STATEMENT OF WORD COUNT

I hereby certify that this brief contains less than 4,200 words.

Kenneth D. Reed, Atty. No. 5942-45

IN THE LAKE SUPERIOR COURT

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

DON and NANCY ENGEL; MARGIE A. FRANTA; MARY JANE GRENNON; BENJAMIN W. HECHT; EVELYN H. REAVES; KEITH and DANIELLE SLEIGHT; SHERRY L. WILLIAMS; ALETTA. HICKS; Voters, Taxpayers, Citizens and Residents of the County of Lake, State of Indiana, and MILLER CITIZENS CORPORATION, an Indiana Non-Profit Corporation, ("MCC"),

Plaintiffs-Petitioners,

vs.

GOVERNOR OF THE STATE OF INDIANA; ATTORNEY GENERAL OF THE STATE OF NDIANA; INDIANA COMMISSIONER OF THE DEPARTMENT OF LOCAL GOVERNMENT FINANCE;
(CLASS I DEFENDANTS);

* * * *

TREASURER OF LAKE COUNTY, INDIANA; AUDITOR OF LAKE COUNTY, INDIANA ASSESSOR OF LAKE COUNTY, INDIANA, LAKE COUNTY INDIANA PROPERTY.TAX ASSESSMENT BOARD OF APPEALS
(CLASS II DEFENDANTS);

* * * *

UNITED STATES STEEL CORPORATION; ISPAT INLAND, INC.; INTERNATIONAL STEEL GROUP, INC.; BP PRODUCTS NORTH AMERICA, INC., Formerly Amoco Oil Company, and using' Amoco Oil Company as an Assumed Business Name; as well as other fictitious names in Lake County, Indiana;
as well as BP Amoco Chemical Company and Amoco Chemicals, Assumed Business Name, Lake County, Indiana, a Delaware Corporation; ("The Big Four")

(CLASS III DEFENDANTS);

* * * *

COLE LAYER TRUMBLE COMPANY, a Division of Tyler Technologies, Inc., a Corporation of the State of Delaware, ("CLT"); as well as COLE-LAYER-TRUMBLE) COMPANY, an Assumed Business Name For Day and Zimmermann Incorporated
(CLASS IV DEFENDANTS);

* * * *

CALUMET TOWNSHIP ASSESSOR; CEDAR CREEK TOWNSHIP ASSESSOR; CENTER TOWNSHIP ASSESSOR;9 EAGLE CREEK TOWNSHIP ASSESSOR;a' HANOVER TOWNSHIP ASSESSOR;la HOBART TOWNSHIP ASSESSOR;I2 NORTH TOWNSHIP ASSESSOR;13 ROSS TOWNSHIP ASSESSOR; ST. JOHN TOWNSHIP ASSESSOR; WEST CREEK TOWNSHIP ASSESSOR;and WINFIELD TOWNSHIP ASSESSOR;
(CLASS V DEFENDANTS),)

Defendants-Respondents.

SPECIAL FINDINGS OF FACT, CONCLUSIONS OF LAW THEREON, AND DECLARATORY JUDGMENT AND EMERGENCY PRELIMINARY INJUNCTION

This matter having come before the Court for hearing upon 1) Plaintiff's Complaint for Declaratory Relief and Emergency Injunction Relief; 2) Petition to Intervene filed by the Hammond City Council; 3) Petition to Intervene flied by East Chicago Common Council; 4) Motion to Dismiss filed by the State of Indiana; 5) Motion for Change of Venue filed by Cole Layer Trumble Company; 6) Cole Layer Trumble Company's oral motion for dismissal; 7)

Oral Motion of pro se Booker Blumenburg, Jr., Calumet Township Assessor, to be realigned from status of defendant to status of plaintiff; and 8) Plaintiff's request that pursuant to Rule 57 its Declaratory Judgment action be considered on an expediafed basis. The parties appeared. .as follows:
Abrahamson, Reed & Bilse
by: Messrs. Kenneth Reed, Harold Abrahamson and John Reed
200 Russell Street
Hammond, IN 46320
Appeared on behalf of the plaintiffs

Martin & Martin,.by: Mr. James W. Martin
8585 Broadway, Suite 660
Merrillville, IN 464:10
Appeared on behalf of the plaintiffs

Mr. Douglas Grimes
6941 Ironwood
Gary, IN 46410
Appeared on behalf of the plaintiffs

Mr. Gregory S. Reising
607 South Lake Street, Suite A
Gary, IN 46403
Appeared on behalf of the plaintiffs

Mr. Robert G. Berger
3912 Highway Avenue
Highland, IN 46322
Appeared on behalf of the Common Council
of the city of Hammond, Indiana

Mr. Joseph Allegretti
6920 Hohman Avenue

Hammond, IN 46324
Appeared on behalf of the Common Council of the City of East Chicago, Indiana

Sterba & Wieser, by: Mr. James Wieser
425 West Lincoln Hwy
Schererville, IN 46375
Appeared on behalf of the Lake County Auditor

Mr. Joseph Irak
Barrister Court
9219 Broadway, East Side
Merrillville, IN 46410
Appeared on behalf of the Lake County Auditor, Lake County Assessor and Township Assessors of Cedar Creek, Center, Eagle Creek, Hanover, Hobart, North, Ross, St. John, West Creek and Winfield

Steve Carter, Attorney General of the State of Indiana
by: Messrs. Doug I/Vebber and Ted J. Holaday Indiana Government Center South
402 West Washington Street, 5th Floor
Indianapolis, IN 46204
Appeared on behalf of Class I Defendants

Singleton, Crist, Austgen & Sears
by: Mr. Terence M. Austgen 9245 Calumet Avenue,
Suite 200
Munster, IN 46321
Appeared on behalf of US Steel

Bingham McHale
By: Mr. Jeffrey T. Bennett
2700 Market Tower

10 West Market Street
Indianapolis, IN 46402
Appeared on behalf of BP Products North America

Barnes & Thornburg
By: Mr. Michael V. 1Gnight
600 1st Source Bank Center
100 N Michigan
South Bend, IN 46601
Appeared on behalf of ISG

DeLaney & DeLaney
By: Ms. Kathleen A. DeLaney
251 North Illinois St~reet, Suite 980
Indianapolis, IN 46204
Appeared on behalf of Class IV Defendant - Cole Layer Trumble Company

Mr. Booker Blumburg, Jr.
Calumet Township Assessor
Appeared pro-se;

With regard to the motions filed the Court rules as follows:

A) Cole Layer Trumble Company's oral motion to dismiss without prejudice is considered. Plainfffffs and no other party defendant object to said motion.
As such, Cole Layer Trumble Company is hereby dismissed from this action without prejudice.
B) Cole Layer Trumble company's motion for change of venue is moot due to the dismissal of this party.
C) The Petition to Intervene filed by the Hammond City Council is granted.

D) The Petition to Intervene filed by the East Chicago Common Council is granted.

E) The State of Indiana moves to dismiss this matter upon the grounds that this Court lacks subject matter jurisdiction, i.e., the proper and exclusive forum for this matter is the Indiana Tax Court. Further, the State alleges that plaintiff's have failed to exhaust their administration remedies. For its positions, the State of Indiana relies upon statutory provisions and case law, specifically, I.C. 33-3-5-2(a)(2), State v Sproles, 672 N.E.2d 1353 (Ind. Sup. Ct. 1996), and Winski Bros., Inc. v Bayh, 679 N.E.2d 912 (Ind. Ct. App. 1997). The State alleges that these authorities stand for the proposition that all cases which "arise under" Indiana tax laws are for the Indiana Tax Court to determine. See, Sproles, 672 N.E.2d at 1357. "Arises under" is defined as:. 1) an Indiana tax statute creates a right of action or, 2) the case principally involves collection of a tax or defenses to the collection. Contrary to the State's position, this case fits neither scenario. This case is whether or not the challenged statutes, which pertain to the manner of assessments, constitute forbidden Special legislation. This is not a "tax issue" upon which special "tax expertise" is needed. To the contrary, the determination as to whether to challenged statutes are unconstitutional is uniquely suited for this Court. As such, the State's motion is denied.

F) The oral Motion of pro se Booker Blumenburg, Jr., Calumet Township Assessor, to be realigned from status of Defendant to status of Plaintiff, without objection, is granted.

G) Plaintiffs request for expediated consideration of its declaratory judgment action is granted.

The Court having received evidence, including Plaintiffs' Exhibits "A," "B," and "C," which were admitted without objection, having considered the Record of Proceedings herein, and having heard the arguments of the attorneys for the parties appearing herein, and now being duly advised in the premises Finds, Orders, Adjudges and Decrees as follows:

FINDING OF FACT AND CONCLUSIONS OF LAW

(1) The Court has jurisdiction of the parties, the subject matter, and the power to hear and determine the issues in this case.

I.

THE PARTIES

(2) The individual plaintiffs are each and all voters, taxpayers, citizens and residents of the Miller section of the City of Gary, Indiana (Taxing Unit No. 25, Lake County, Indiana). MCC is a long-sfanding organization of Miller and Gary residents formed to protect, foster and promote civic interests. Plaintiffs seek declaratory and injunctive relief herein, individually and collectively, on their-own behalf, as well as seeking such relief on behalf of all taxpayers similarly situated, pursuant to Ind. Trial Rule 23 governing class actions. No ruling is made today with regard to the request for class certification.

(3) Class I defendants are all the elected and appointed officials of the State of Indiana who are directly and indirectly involved in budgeting, assessment, taxation, protection of voter rights and administration of enactments of the Indiana General Assembly, and performing such duties as are within the ambit of their power under the Constitution of the State of Indiana, and the Statutes of the State of Indiana. Said Class I defendants are, in no small part, responsible for the implementation of legislative enactments codified as I.C. 6-1.1-4-32 and I.C. 6-1.1-8.5 - 1 through 13. To that extent, said Class I defendants are responsible for the administration and implementation of statutory enactments.

(4) Class II defendants are all of the elected officials of the County of Lake, State of Indiana, charged on a County-wide basis with responsibility for lawful assessment of real estate, taxation of real estate, collection of taxes on real ~state, and administration and implementation of miscellaneous statutes dealing therewith, and administering the budgets and tax levies, to a large extent, of the Lake County Board of Commissioners, and the Lake County Common Council. Said defendants also have responsibility for the distribution and expenditure of funds collected on behalf of the County, as well as numerous local municipal taxing bodies.

(5) Class III defendants are substantial land owners situated basically on the lakeshore of the soutl~ern edge of Lake Michigan in northwest Lake County, Indiana, engaged in steel production and sale, and the refining, production and sale of oil and petroleum products, respectively. Said defendants are substantial owners of land and improvements in Lake County, Indiana, primarily situated in North Township and Calumet Township, and for many years last past have been very substantial taxpayers of both real estate taxes and business tangible personal property taxes in Lake County, Indiana, and in the cities, towns and townships situated in Lake County, Indiana.

(6) Class IV defendant, Cole Layer Trumb!e Company, (hereinafter, "CLT") is an appraisal company from the private sector contracted pursuant to I.C. 6-1.1-4-32, by the State of Indiana, at the cost of Lake Coun.ty taxpayers, to perform a general reassessment of all real estate in Lake County, Indiana, for assessment date March 1, 2002, and affecting the tax payments due for the last half of 2002, payable in 2003 (extended into 2004), as well as all of assessment date March 1, 2003 payable in two installments in May and November of 2004~ (In 1998, the Indiana Supreme Court ordered that land and improvements in Lake County, Indiana, be reassessed at their fair

market ~¢alue'~in use" figures, rather than at the former artificial "true tax value" or "true cash value" levels.) (State Board of Tax Commissioners vs. Town of St. John, 702 N.E.2d 1034 (Ind. 1998)). CLT's charge, however, did not include the properties of "The Big Four", i.e. the Class III defendants, U. S. Steel Corporation, Ispat Inland, Inc., International Steel Group, Inc. and BP Products North America, Inc. Cole Layer Trumble charged $25,000,000 for its services, under a contract with the State of Indiana, but at the cost of the taxpayers of Lake County, Indiana.

(7) Class V defendants are the duly elected and acting Township Assessors of Lake County, Indiana, charged by law and the electorate with the responsibility for assessing all real estate in Lake County, Indiana, until the year 2002, when the Indiana General Assembly and various State officials, acting pursuant to statutes of the State of Indiana, usurped .those duties and responsibilities, and transferred them over to non-elected appraisers/assessors such as CLT, which assessed all of the properties in Lake County, Indiana, except the properties of The Big Four, which were assessed under separate contract, and under "special rules" by an unidentified assessor/appraiser, in what was basically a secret proceeding.

II.

THE SUBJECT MATTER

(8) The subject matter of this lawsuit is the (a) constitutionality of Indiana Code 6-1.1-4-32 and Indiana Code 6-1.1-8.5- 1 to 13, inasmuch as they only apply to Lake County, Indiana, and also make a set of special rules for four targeted ~axpayers; (b) the resulting reassessment of each and every parcel of real estate in Lake County, Indiana, pursuant to those statutes; (c) the legality and constitutionality of the assignment of the performance of duties, statu~orily cast upon the Township Assessors, to

private contractors, for whom no one vo*:ed, but as appointed by State officials, for whom no one voted, none of which was done in any other county in the state.

III.

APPLICABLE LAWS

(9) The following laws, i.e. (a) constitutional provisions; (b) statutes; (c) case precedents; and (d) trial rules are involved in, and applicable to, the issues in this case:

A. Indiana Constitutional Provisions: Article 1, Section 21; Article 1, Section 23; Article 4, Section 22; Article 4, Section 23; and Article 10, Section 1.

B. Statutes: (i) Reassessment Statutes: I.C. 6-1.1-4-32 and I.C. 6-1.1-8.5-1 to 13; (ii) Declaratory Judgment Act, I.C. 34-14-1-1, et seq.; and (iii) Injunction Act; I.C. 34-26-1-1.

C. Case Precedents: (i) State Board of Tax Commissioners vs. Town of St. John, 702 N.E.2d 1034. (Ind. 1998); appeal after remand, 751 N.E.2d 657 (Ind. 2001); and (ii) City of South Bend, etc. vs. Kimsey, 781 N.E.2d 683 (Ind. 2003).

D. Ind. Trial Rules: (i) T.R. 23 - Class Actions; (ii) T.R. 57 - Declaratory Judgments; (iii) T.R. 65 - Injunct-ions.

IV.

THE NATURE OF THE CONTROVERSY

(10) During the 2001 legislative session,, the State of Indiana enacted into law House Enrolled Act No. 1902 which, inter alia, added new sections to the Indiana Code as I.C. 6-1.1-4-32 et seq. and I.C. 6-1.1-8.5-1 to 13.

(11) Pursuant to the authority granted under I.C. 6-1.1-4-32, the State Defendants entered in to a Professional Services Contract ("Contract") with Cole Layer Trumble Company to perform a general reassessment of the Real Estate in Lake County, Indiana. This Contract

obligated. Plaintiffs and other Lake County Taxpayers to pay Cole Layer Trumble the sum of approximately $25 Million for conducting a reassessment of the Real Estate in Lake County, Indiana, even though they are not parties to the Contract.

(12) The enactment of I.C. 6-1.1-4-32 applies only to Lake County and not to any of the other 91 counties in the State of Indiana. Moreover, I.C. 6-1.1~4-32 applies onlv to the March 2002 reassessment.

(13) Under the provisions of I.C. 6-1.1-4-32, the plaint-Lffs and the other Lake County owners are deprived of their righ~ to assessment by Township and/or County Assessors to perform the reassessment of their property for the 2002 general reassessment, while still paying taxes for that public function.

(14) The State officials and CLT and the Big Four appraiser have performed all of these acts under the Color of law. See I.C. 6-1.1-8.5 §§ 1-13, inclusive, and I.C. 6-1.1-4-32. These statutes, and their miscellaneous sections, are likewise, part and parcel of the House Enrolled Act No. 1902, Ist Regular Session, 112tu General Assembly (2001) Sections 2&3.

(15) The primary function of the individuals elected by and answerable to the plaintiffs and other Lake County electorates as their County and/or Township Assessor(s), is to assess Real Property for reassessment purposes in the State of Indiana. (See I.C. 6-1.1-4 et seq.)

(16) Article 10, Sec. 1 of the Indiana Constitution provides, in part;

> Section. 1 (a) "The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal. . ..; (Not available in Kimsey).

(17) . I.C. 6-1.1-4-32 et seq interferes with the rights of Taxpaying Plaintiffs to pay the actual costs incurred by

their local Assessors in the performance of their duties incident to the assessment of Real Estate in Lake County, Indiana.

(18) - Article 1, Sec. 23 of the Indiana Constitution provides:

> Section 23. The General Assembly shall not grant to any citizens of class of citizens, privileges and irnmunities, which, upon the same terms, shall not equally belong to all citizens.

(19) Article 4, Sections. 22 and 23 of the Indiana Constitution prohibits the Legislature from:

> Section 22 . . . . passing local or special lazes. . .providing for the assessment and collection of taxes for State, county, township, or road purposes.
>
> Section 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all lazes Shall be general, and of unifor-m operation throughout the State.

(20) Although I.C. 6-1.1-4-32 et seq. and I.C. 6-1.1-8.5, et seq. attempt to circumvent the Constitutional prohibition against Special Litigation by defining a "qualifying County" which will be subject to the Act as being a "County having a population of more that four hundred thousand (400,000) but less than seven hundred thousand (700;000) .", the Act relates only to the March 2002 reassessment and population levels for such reassessment have already been determined. As such, no County in the State of Indiana other than Lake County could conceivably come within the definition of "qualifying County" for purposes of implementation of the Act.

(21) As Lake County, Indiana is the only County in the State of Indiana which will ever be affected by the Act, it constitutes "Special Legislation" in ~ontravention of

Article 4 §§ 22 and 23 of the Indiana Constitution.

(22) Pursuant to I.C. 6-1.1-4-32 et seq.:

(a) Only the Taxpaying Plaintiffs, as residents of Lake County, Indiana .are precluded from having their Real Estate assessed bY local-assessors;
(b) Only the Taxpaying Plaintiffs, as residents of Lake County, Indiana are required to have their Real Estate assessed by an outside firm;

(c) Only the Taxpaying Plaintiffs, as residents of Lake County, Irfdiana are required to pay per parcel assessment cost substantially gre~iter than the resident of any other County in the State of Indiana;
(d) Only the Taxpaying Plaintiffs, as residents of Lake County, Indiana are required to pay a sum in excess of $25 Million for the reassessment of their Real Estate, in addition to the tax financial budgets of the Township Assessors;
(e) Only in Lake county, Indiana, are 4 taxpayers segregated from all other taxpayers, for special reassessment, under "special rules", by a separate private party.

To make the legislation even more targeted, i.e. "Special", the four (4) largest industrial owners in Lake County are segregated out for separate contract reassessment, under "Special Rules". I.C. 6-1.1-8.5-1 to 13.

(23) The direct result of the enactment by the General Assembly of I.C. 6-1..1-4-32 and I.C. 6-1.1-8.5, et seq., and the implementation of said Statutes by the appointees of the Executive Depar.tment, and their selected private contractors, including CLT, is that the assessed value of the lands and improvements of The Big Four have plummeted to historically low levels, and simultaneously, the assessed values of virtually all other properties in the

County of Lake and all of the Townships therein have inc, reased geometrically. The proximate result of that event is that, while the budgets of the various governmental bodies funded through real estate taxes may have stayed approximately the same (tax levies), the volume of actual taxes to be used to fund those budgets have shifted dramatically from The Big Four to plaintiffs, including virtually all other taxpayers in Lake County, Indiana, and the Townships therein.

V.

THE CASE PRECEDENTS

(24) In 1998, the Indiana Supreme Court decided State Board of Tax Commissioners vs. Town of St. John, 702 N.E.2d 1034 (Ind. 1998), appeal after remand, 751 N.E.2d 657 (Ind. 2001), the net result of which was that the Indiana Statutes and Administrative Rules and Regulations and practices concerning the assessment of real estate throughout the State of Indiana were held to be unconstitutional and unlawful. That is to say, the method of valuing real estate for assessment and tax purposes; at its so-called "true tax value" or "true cash value", which were artificial means, at best, were disavowed and the Supreme Court mandated that henceforth all real estat.e in Indiana be assessed at its fair market value in use. By that is meant the value which a willing seller. would sell for, and a willing buyer would pay, each being rather equally knowledgeable concerning the subject real estate; and the subject real estate having been exposed for a period of time on the market. However, ordinarily, fair market value is influenced by the highest and best use to which the property may be put. By highest and best use is meant that lawful use to which real estate may be devoted, which would bring the highest return of money to the owner. Highest.and best use was not a factor in the Supreme Court decision. Rather, the Court indicated that

market value for purposes of assessment for taxation reasons.

(25) In the year 2001, legislation was passed through the Indiana General Assembly, with the approval of the Executive Branch of government, resulting in House Enrolled Act 1902, and codified in I.C. 6-1.1-G32[18] and 6-1.1-8.5-1 through 13, inclusive. These Statutes bypassed the local Township Assessors and the County Assessor in Lake County, Indiana, concerning the real estate assessment for the March 1, 2002 date, and presumably years following that, including 2003 payable 2004. The Statutes provided that the function of the Township Assessors and County Assessors were to be turned over to the Department of Local Government Finance and to private contractors designated by appointed State officials; one contractor (or employee of the Department of Local Government Finance) assig~ned to reassess The Big Four's real estate in Lake County, Indiana, primarily in North Township and Calumet Township, under "Special Rules" (I.C. 6-1.1-8.5), and the other private contractor (CLT) commissioned.for $25,000,000 to be paid by the local taxpayers to reassess all other property in Lake County, Indiana, and the Townships therein. (I.C. 6-1.1-4-32)

(26) In January, 2003, the.Indiana Supreme Court decided the case of Ci.ty of South Bend. etc. vs. Kimsey, 781 N.E.2d 683 (Ind. 2003), which held that an annexation statute which was limited in its scope by population parameters to include only the County of St. Joseph,

---

[18] It would be difficult, if not impossible, to find a Statute which has been amended more frequently in the few years immediately following enactment, than this Statute. P.L. 151-2001, emerg, eff. 5/3/01; P.L. 90-2002, Sec. 45, emerg, eff. 3/21/02; P.L. 151-2002, Sec. 2, emerg, elf. 3/27/02; P.L. 178-2002, Sec. 8, emerg, eff. 3/28/02; P.L. 235-2003, Sec. 2, emerg, eff. 5/8/03; P.L. 1-2004, Sec. 70, emerg, eff. 12/12/032

(concerning level of remonstrance ?against annexation proceedings), was unconstitutional as violative of Indiana Constitution Art. 4,. Section 23, requiring that all laws be general in nature. The Supreme Court noted that Indiana Constitution Article 4, Section 22, prohibiting special laws, in certain specified subject areas, did not apply inasmuch as the issue or subject of annexation was not one of the several specified subject areas prohibited in Sec. 22. However, the case at bar does involve a subject prohibited under Sec. 22 of Article 4, i.e. assessment. The case at bar also presents an issue under Article 10, Section 1, requiring fair and equal assessment and taxation laws in the State of Indiana, which constitutional provision was not applicable in the Kimsey decision. Finally, the prohibitions expressed in Article 1, Section 21, i.e. taking without due process, and Article 1, Section 23 of the Constitution concerning equal privileges and immunities are implicated herein.

(27) The bottom line is that the real and practical effect of the enactment and implementation of the current general reassessment, pursuant to Indiana Code 6-1.1-4-32 and 6-1.1-8.5 - 1 through 13, inclusive, is catastrophic in proportions. Ord'inary people are subject to being ruined as to .their finances.

VI.

THE COLE LAYER TRUMBLE CONTRACT AND PERFORMANCE

(28) The State contracted with Cole Layer Trumble to do the reassessment of all properties in Lake County, Indiana, except properties owned by The Big Four. (The Big Four assessments were done secretly, under "special rules" provided in I.C. 6-1.1-8.5). The State ordered Lake County and its taxpayers to pay $25,000,000 to Cole Layer Trumble for performing that job.

VII.

THE EMERGENCY AND THE STATUS QUO

(29) As to the nominal plain~fs an emergency exists for legal and equitable judicial intervention in this case, :for the reason(s) that the plaintiff parties are in imminent danger of sustaining irreparable harm for which they have no adequate remedy at law, in this that:

1. As a proximate result of the effects of the subject reassessment, and upon issuance by the Lake County Treasurer of the'new" tax bills for (a) the balance of the second half of 2002 pay 2003; and (b) the first half of 2003 pay 2004 real estate taxes, it will:
   - (a) be impossible for many, and extremely difficult for others to pay the tax bills, thus incurring the risk and probability of delinquen.cy, including the incurring of penalties, interest and charges, and. the spectre of tax sale under I.C. 6-1.1-24;
   - (b) Mortgagees holding real estate tax escrow agreements will be insisting upon their right to demand additions to the real estate tax escrow account, both *in praesenti and in futuro.*
   - (c) Inasmuch as the higher tax burdens will necessarily reduce the fair market value of mortgaged properties, the mortgagees may well declare themselves insecure, under common mortgage terms, and declare a default, accelerating the due date term of the mortgage(s).
   - (d) These are all matters ex contractu to which the Court has no jurisdiction to interdict or remedy, as between the borrowers and the mortgages. Hence, the statutes must be ruled upon immediately.
2. The taxpayers, except The Big Four, are sustaining immediate impairment of cash flow and savings, coupled with a loss of equity in their property; all in contravention of Indiana Constitution, Art. I, See. 21.

3. The Emergency Is Such That (A) the Treasurer is on the verge of issuing the new tax bills; (B) there are no disputed facts that the reassessments took place, and the devastating results thereof (except for the big four); and (C) an immediate judicial reading, in Pari Materia, of (I) I.C. 6-1.1-4-32 and I.C. 6-1.1-8.5-1 to 13; coupled with (II) Ind. Const., Art. I, Secs. 21 and 23; Art. 4, Secs. 22 and 23; and Art. 10, Sec. 1; and (III) the Supreme Court analysis in City of South Bend vs Kimsey; and the said statutes, and resulting reassessments are void, and that impending tax bills are therefore unjustified and illegal.

4. Finally, the Court has a duty to act under the Declaratory Judgment Act, invoked by plaintiffs' Complaint. No party should be allowed to act in any way that would interfere with the opportunity of the Court to exercise that solemn jurisdiction. Hence, a status quo order must necessarily be entered herein.

5. Even though parties on both sides of the suit are governmental entities, in order to comport with T.R. 65 C, the Court finds a bond should be posted.

ORDER, JUDGMENT AND DECREE

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That I.C. 6-1.1-4-32 and I.C. 6-1.1-8.5, et seq., are declared unconstitutional and violative of Ind. Const. Article I, Sections 21 and 23; Art. IV, Sections 22 and 23; and Art. X, Sec. 1.

2. That all reassessments for assessment date March 1, 2002, and following, certified pursuant to said Statutes, are, therefore, declared and adjudged null and void.

3. The Treasurer of Lake County, Indiana, is Ordered to bill taxpayers for the balance due from year 2002 payable 2003, pursuant to the assessed values 'upon which the first payment was earlier billed for payment one-half

in the Spring of 2003 and 20% in the Fall of 2003; i.e. the 30% balance, plus any delinquencies, charges, penalties or interest otherwise due for non-payment.

4. The Treasurer of Lake County, Indiana, is enjoined from mailing the new tax bills based upon the CLT assessment.

5. Plaintiffs-Petitioners to post a bond in the amount of $100.00.

ALL OF WHICH IS ORDERED this 7th day of July 2004, at 2:35 pm.

/s/ Judge, Lake Superior Court, Room 5

COURT TO NOTIFY

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES ANNOTATED

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS: PUBLIC DEBT; ENFORCEMENT

Section 1, All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 20—ELECTIVE FRANCHISE
SUBCHAPTER I—GENERALLY

§ 1971 Voting rights

(a) Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any; State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (I) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to Title Ill of the Civil Rights Act of 1960 [42 U.S.C.A. § 1974 et seq.]: *Provided, however,* That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

(3) For purposes of this subsection—

(A) the term "vote" shall have the same meaning as in subsection (e) of this section;

(B) the phrase "literacy test" includes any test of the ability to read, write, understand, or interpret any matter.

(b) Intimidation, threats, or coercion

No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other" person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

(c) Preventive relief; injunction; rebuttal literacy presumption; liability of United States for costs; State as party defendant

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttal presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses sufficient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, it; prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

(d) Jurisdiction; exhaustion of other remedies

The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

(e) Order qualifying person to vote; application; hearing; voting referees; transmittal of report and order; certificate of qualification; definitions

In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections-(1) he is qualified under State law to vote, and (2) he has since such finding by, the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding any inconsistent provision of State law or the action of any State officer or court, an applicant so declared qualified to vote shall be permitted to vote in any such election. The Attorney General shall cause to be transmitted certified copies of such order to the appropriate election officers. The refusal by any such officer with notice of such order to permit any person so declared qualified to vote to vote at an appropriate election shall constitute contempt of court.

An application for an order pursuant to this subsection shall be heard within ten days, and the execution of any order disposing of such application shall not be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the applicant would otherwise be enabled to vote.

The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by section 3331 of Title 5, to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age, residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact. and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

The court, or at its direction the voting referee, shalt issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided however*, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The Court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words "affected area" shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words "qualified under State law" shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

(f) Contempt; assignment of counsel; witnesses

Any person cited for an alleged contempt under this Act shall be allowed to make his Full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof; shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have flee access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel.

(g) Three-judge district court: hearing, determination, expedition of action, review by Supreme Court; single-judge district court: hearing, determination, expedition of action.

In any proceeding instituted by, the United States in any district court of the United States under this section in which the Attorney General requests a finding of a pattern or practice of discrimination pursuant to subsection (e) of this section the Attorney General, at the time he files the complaint, or any defendant in the proceeding, within twenty days after service upon him of the complaint, may file with the clerk of such court a request that a court of three judges be convened to hear and determine the entire case. A copy of the request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding as instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In any proceeding brought under subsection (c) of this section to enforce subsection (by of this section, or in the event neither the Attorney General nor any defendant files a request for a three-judge court in any proceeding authorized by this subsection, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or, in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to heat and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every wav expedited.

WEST'S ANNOTATED INDIANA CODE
CONSTITUTION OF THE STATE OF INDIANA
[ANNOTATED]

ARTICLE IV. *LEGISLATIVE.*

§ 22 Local and special laws; restrictions

Section 22. The General Assembly shall not pass local or special laws:
Providing for the punishment of crimes and misdemeanors;
Regulation the practice in courts of justice
Providing for changing the venue in civil and criminal cases;
Granting divorces;
Changing the names of persons;
Providing for laying out, opening, and working on, highways, and for the election or appointment of supervisors;
Vacating roads, town plats, streets, alleys, and public squares;
Summoning and empaneling grand and petit juries, and providing for their compensation;
Regulating county and township business;
Regulating the election of county and township officers and their compensation;
Providing for the assessment and collection of taxes for State, county, township, or road purposes;
Providing for the support of common schools, or the preservation of school funds;
Relating to fees or salaries, except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;
Relating to interest on money;
Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting:

Providing for the sale off real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees..
(History: As Amended March 14, 1881; November 6, 1984).

WEST'S ANNOTATED INDIANA CODE CONSTITUTION OF THE STATE OF INDIANA [ANNOTATED]

ARTICLE IV. *LEGISLATIVE.*

§ 23 General and uniform laws

TEXT

Section 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

IC 6-1.1-4-32

General reassessment of real property in certain counties

Sec. 32. (a) As used in this section, "contract" refers to a contract entered into under this section.

(b) As used in this section, "contractor" refers to a firm that enters into a contract with the department of local government finance under this section.

(c) As used in this section, "qualifying county" means a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(d) At least one (1) time each month, ~he contractors that will make physical visits to the site of real property for reassessment purposes shall publish a notice under IC 5-3-1 describing the areas that are scheduled to be visited within the next thirty (30) days and explaining the purposes of the visit. The notice shall be published in a way to promote understanding of the purposes of the visit in the affected areas. After receiving the report of assessed values from the appraisal firm acting under a contract described in subsection (e), the department of local government finance shall give notice to the taxpayer and the county assessor, by mail, of the amount of the reassessment. The notice of reassessment:

(1) is subject to appeal by the taxpayer under section 34 of this chapter; and

(2) must include a statement of the taxpayer's rights under sections 33 and 34 of this chapter.

(e) Notwithstanding IC 4-13-2, a period of seven (7) days is permitted for each of the following to review and act under IC 4-13-2 on a contract of the department of local government finance under this section:

(1) The commissioner of the Indiana department of administration.

(2) The director of the budget agency.

(3) The attorney general.

(4) The governor.

(f) With respect to a general reassessment of real property to be completed under section 4 of this chapter for an assessment date after the March 1, 2002, assessment date, the department of local government finance shall initiate a review with respect to the real property in a qualifying county or a township in a qualifying county, or a portion of the real property in a qualifying county or a township in a qualifying county. The department of local government finance may contract to have the review performed by an appraisal firm. The department of local government finance or its contractor shall determine for the real property under consideration and for the qualifying county or township the variance between:

(1) the total assessed valuation of the real property within the qualifying county or township; and

(2) the total assessed valuation that would result if the real property within the qualifying county or township were valued in the manner provided by law.

(g) If:

(1) the variance determined under subsection (j) exceeds ten percent (10%); and

(2) the department of local government finance determines after holding hearings on the matter that a special reassessment should be conducted; the department shall contract for a special reassessment by an appraisal firm to correct the valuation of the property.

(h) If the variance determined under subsection (f) is ten percent (10%) or less, the department of local government finance shall determine whether to correct the valuation of the property under:

(1) sections 9 and 10 of this chapter; or

(2) IC 6-1.1-14-10 and IC 6-1.1-14-.11.

(i) The department of local government finance shall give notice by mail to a taxpayer of a hearing concerning the department's intent to cause the taxpayer's property to be reassessed under this section. The time fixed for the hearing must be at least ten (10) days after the day the notice is mailed. The department of local government finance may conduct a single hearing under this section with respect to multiple properties. The notice must state:

(1) the time of the hearing;

(2) the location of the heating; and

(3) that the purpose of the hearing is to hear taxpayers' comments and objections with respect to the department of local government finance's intent to reassess property under this chapter.

(j) If the department of local government finance determines after the hearing that property should be reassessed under this section, the department shall:

(1) cause the property to be reassessed under this section;

(2) mail a certified notice of its final determination to the county auditor of the qualifying county in which the property is located; and

(3) notify the taxpayer by mail of its final determination.

(k) A reassessment may be made under this section only if the notice of the final determination under subsection (i) is given to the taxpayer within the same period prescribed in IC 6-1.1-9-3 or IC 6-1.1-9-4.

(1) If the department of local government finance contracts for a special reassessment of property under this section, the qualifying county shall pay the bill, without appropriation, from the county property reassessment fund. A contractor may periodically submit bills for partial payment of work performed under a contract. Notwithstanding any other law, a contractor is entitled to payment under this subsection for work performed under a contract if the contractor:

(1) submits, in the form required by IC 5-11-10-1, a fully itemized, certified bill for the costs under the contract of the work performed to the department of local government finance for review;

(2) obtains from the department of local government finance:

(A) approval of the form and amount of the bill; and

(B) a certification that the billed goods and services billed for payment have been received and comply with the contract; and

(3) files with the county auditor of the qualifying county:

(A) a duplicate copy of the bill submitted to the department of local government finance;

(B) the proof of approval provided by the department of local government finance of the form and amount of the bill that was approved; and

(C) the certification provided by the department of local government finance that indicates that the goods and services billed for payment have been received and comply with the contract. An approval and a certification under subdivision (2) shall be treated as conclusively resolving the merits of the claim. Upon receipt of the documentation described in subdivision (3), the county auditor shall immediately certify that the bill is true and correct without further audit, publish the claim as required by IC 36-2-6-3, and submit the claim to the county executive of the qualifying county. The county executive shall allow the claim, in full, as approved by the department of local government finance without further examination of the merits of the claim in a regular or special session that is held not less than three (3) days and not more than seven (7) days after completion of the publication requirements under IC 36-2-6-3. Upon allowance of the claim by the county executive, the county auditor shall immediately issue a warrant or check for the full amount of the claim approved by the department of local government finance. Compliance with this subsection shall be treated as compliance with section 28.5 of this chapter, IC 5-11.-6-1, IC 5-11-10, and IC 36-2-6. The determination and payment of a claim in compliance with this subsection is not subject to remonstrance and appeal. IC 36-2-6-4(f) and IC 36-2-6-9 do not apply to a claim under this subsection. IC 5-11-10-1.6(d) applies to a fiscal officer who pays a claim in compliance with this subsection.

(m) A qualifying official (as defined in IC 33-26-8-3) shall provide information requested in writing by the department of local government finance or the department's contractor under this section not later than seven (7) days after receipt of the written request from the department or the contractor. If a qualifying official (as defined in IC 33-26-8-3) fails to provide the requested information within the time permitted in this subsection, the department of local government finance or the department's contractor may seek an order of the tax court under IC 33-26-8 for production of the information.

(n) The provisions of this section are severable in the manner provided in IC 1-1-1-8(b).

(o) This section expires December 31, 2006.

As added by P.L.151-2 001, SEC.2. Amended by P.L. 90-2002, SEC.45; P.L.151-2 002, SEC.2 and P.L 178-2002, SEC. 8; P.L 235-2003, SEC.2; P.L. 98-2004, SEC. 69.

Information Maintained by the Office of Code Revision Indiana Legislative Services Agency
05/26/2005 09:31:18 AM EST

IC 6-1.1-8.5

Chapter 8.5. Assessment of Industrial Facilities

IC 6-1.1-8.5-1

"Industrial company" defined

Sec. 1. As used in this chapter, "industrial company" means an owner or user of industrial property.

As added by P.L. 151-2001, SEC.3.

IC 6-1.1-8.5-2

"Industrial facility" defined

Sec. 2. As used in this chapter, "industrial facility" means a company's real property that:

(1) has been classified as industrial property under the rules of the department of local government finance; and

(2) has a true tax value, as estimated by the department, of at least twenty-five million dollars ($25,000,000) in a qualifying county. The term includes real property that is used under an agreement under which the user exercises the beneficial rights of ownership for the majority of a year. The term does not include real property assessed under IC 6-1.1-8.

As added by P.L. 151-2001, SEC.3. Amended by P.L.90-2002, SEC.89.

IC 6-1.1-8.5-3

"Qualifying county" defined

Sec. 3. As used in this chapter, "qualifying county" means a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

As added by P.L. 151-2001, SEC. 3.

IC 6-1.1-8.5-4 Repealed

(Repealed by P.L.90-2002, SEC.528.)

IC 6-1.1-8.5-5
Facility to be assessed in prescribed manner

Sec. 5. An industrial facility located in a qualifying county shall be assessed in the manner prescribed in this chapter.

As added by P.L. 151-2001, SEC.3.

IC 6-1.1-8.5-6
List of facilities in qualifying county

Sec. 6. Before:

(1) January 1, 2004; and

(2) January 1 of each year that a general reassessment commences under IC 6-1.1-4-4;

the county assessor of each qualifying county shall provide the department of local government finance a list of each industrial facility located in the qualifying county.

As added by P.L. 151-2001, SEC.3. Amended by P.L. 90-2002, SEC.90.

IC 6-1.1-8.5-7
Notice of newly constructed facilities

Sec. 7. (a) The township assessor of each township in a qualifying county shall notify the department of local government finance of a newly constructed industrial facility that is located in the township served by the township assessor.

(b) Each building commissioner in a qualifying county shall notify the department of local government finance of a newly constructed industrial facility that is located in the jurisdiction served by the building commissioner.

(c) The department of local government finance shall schedule an assessment under this chapter of a newly constructed industrial facility within six (6) months after

receiving notice of the construction from the appropriate township assessor or building commissioner.
As added by P.L. 151-2001, SEC. 3. Amended by P. L. 90-2002, SEC. 91.

IC 6-1.-8.5-8
Reassessment

Sec. 8. For purposes of the general reassessment under IC 6-1.1-4-4 or a new assessment, the department of local government finance shall assess each industrial facility in a qualifying county.
As added by P.L.151-2001, SEC.3. Amended by P.L.90-2002, SEC.92.

IC 6-1.1-8.5-9
Support of department's assessor

Sec. 9. The county assessor of the qualifying county in which an industrial facility is located shall provide support to the assessor of the department of local government finance during the course of the assessment of the industrial facility.
As added by P.L.151-2001, SEC.3. Amended by P.L.90-2002, SEC.93.

IC 6-1.1-8.5-10
Certification of true tax values

Sec. 10. (a) When the department of local government finance determines its final assessments of an industrial facility under this chapter, the department shall certify the true tax values to the county assessor and the county auditor of the qualifying county in which the property is located. In addition, if an industrial company has appealed the department of local government finance's final assessment of the industrial facility, the department of local government finance shall notify the county auditor of the appeal.

(b) The county assessor of a qualifying county shall review the certification of the department of local government finance to determine if any of an industrial company's property has been omitted and notify the department of additions the county assessor finds are necessary. The department of local government finance shall consider the county assessor's findings and make any additions to the certification the department of local government finance finds are necessary. The county auditor shall enter for taxation the assessed valuation of an industrial facility that is certified by the department of local government finance.
As added by P.L.151-2001, SEC.3. Amended by P.L.90-2002, SEC.94.

IC 6-1.1-8.5-11
Appeal of assessment

Sec. 11. (a) A taxpayer or the county assessor of the qualifying county in which the industrial facility is located may appeal an assessment by the department of local government finance made under this chapter to the Indiana board. An appeal under this section shall be conducted in the same manner as an appeal under IC 6-1.1-15-4 through IC 6.-1.1-15-8. An assessment made under this chapter that is not appealed under this section is a final unappealable order of the department of local government finance.

(b) The Indiana board shall hold a hearing on the appeal and issue an order within one (1) year after the date the appeal is filed.
As added by P.L. 151-2001, SEC. 3. Amended by P.L. 90-2002, SEC. 95.

IC 6-1.1-8.5-12
Rules

Sec. 12. The department of local government finance shall adopt rules to provide just valuations of industrial facilities under this chapter.
As added by P.L. 151-2001, SEC. 3. Amended by P.L. 90-2002, SEC. 96.

IC 6-1.1-8.5-13
Conflicts with provisions in other chapters

Sec. 13. This chapter is designed to provide special rules for the assessment and taxation of industrial facilities in a qualifying county. If a provision of this chapter conflicts with a provision of another chapter of this article, the provision of this chapter controls with respect to the assessment and taxation of an industrial facility.
As added by P.L. 151-2001, SEC.3.

U.S.C.A Const. Art. IV § 4

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
ANNOTATED

ARTICLE IV-STATES--RECIPROCAL RELATIONSHIP BETWEEN STATES AND WITH UNITED STATES

Section 4. Republican Government

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Current through P.L. 109-12, approved 05/05/05

U.S.C.A. Const. Art. VI cl. 2

UNITED STATES CODE ANNOTATED
CONSTITUTION OF THE UNITED STATES
ANNOTATED

ARTICLE VI-DEBTS VALIDATED--SUPREME LAW OF LAND-OATH OF OFFICE

Clause 2. Supreme Law of Land

This Constitution, and the Laws a. the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Current through P.L. 109-12 approved 05/05/05

IN CONST Art. X, § 1

CONSTITUTION OF THE STATE OF INDIANA (ANNOTATED] ARTICLE 10. FINANCE

§ 1 Property assessment and taxation

Section 1. (a) The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal. The General Assembly may exempt from property taxation any property in any of the following classes:

(1) Property being used for municipal, educational, literary, scientific, religious or charitable purposes.

(2) Tangible personal property other than property being held as an investment.

(3) Tangible personal property.

(4) Tangible real property including curtilage, used as a principal place of residence by an:
(A) owner of the property;

(B) individual who is buying the tangible real property under a contract or

(C) individual who has a benefkial interest in the owner of the tangible real property.

(b) The General Assembly nay exempt any motor vehicles, mobile homes, aliplanes, boats, trailers or similar property, provided that an excise tax in lieu of the property tax is substituted therefor.

Current through 2005 Public Laws approved and effective through April 22, 2005.

1C 6-1.1-4-35

WESTS ANNOTATED INDIANA CODE

TITLE 6. TAXATION

ARTICLE 1.1. PROPERTY TAXES

CHAPTER 4. PROCEDURES FOR REAL PROPERTY ASSESSMENT

State conductçd reassessment In county

Sec. 35. (a) This section applies to a county other than a county subject to section 32 of this chapter.

(b) This section applies to a general reassessment of real property conducted under section 4(a) of this chapter that is scheduled to become effective for property taxes first due and payable in 2003.

(c) As used in this section, "department" refers to the department of local government finance.
(d) As used in this section, "reassessment official" means any of the following:

(I) A county assessor.
(2) A township assessor.
(3) A township tmstee-assessor.

(e) if:
(1) the department determines that a county's reassessment officials are unable to complete the reassessment in a timely manner; or

(2) the department determines that a county's reassessment officials are likely to complete the reassessment in an inaccurate manner;

the department may order a s conducted reassessment in the county. The department may consider a reassessment in a county untimely if the county does not submit the county's equalization study to the department in the manner prescribed under 50 IAC 14 before October 20, 2003. The department may consider the reassessment work of a county's reassessment officials inaccurate if tiw department determines from a sample of the assessments completed in the county that there is a variance exceeding ten percent (10%) between the total assessed valuation of the real property within the sample and the total assessed valuation that would result if the real property within the sample were valued in the manner provided by law.

(f) If the department orders a state conducted reassessment in a county, the department shall asswne the duties of the county's reassessment officials. Notwithstanding sections 15 and 17 of this chapter, a reassessment official in a county subject to an order issued under this section may not assess property or have property assessed for the general reassessment. Until the state conducted reassessment is completed under this section, the reassessment duties of a reassessment official in the county are limited to providing the department or a contractor of the department the support and information requested by the department or the contractor.

(g) Before assuming the duties of a county's reassessment officials, the department shall transmit a copy of the department's order requiring a stare conducted reassessment to the county's reassessment officials. the count fiscal body, the county auditor, and the county treasurer. Notice of the department's actions must be published one (1) time in a newspaper or general circulation La the county. The department Is not required to conduct a public hearing before taking action under this section.

(h) Township and county officials in a county subject to an order issued under this section shall, at the request of the department or the department's contractor, make available and provide access to all:

(1) data;

(2) records;

(3) maps;

(4) parcel record cards;

(5) forms;

(6) computer software systems;

(7) computer hardware systems; and

(8) other information;

related to the reassessment of real property in the county. The information described in this subsection must be provided at no cost to the department or the contractor of the department. A failure to provide information requested under this subsection constitutes a failure to perform a duty related to a general reassessment and is subject to IC 6-1.1-37-2.

(i) The department may enter into a contract with a professional appraising firm to conduct a reassessment under this section. If a county or a township located in the county entered into a contract with a professional appraising firm to conduct the county's reassessment before the department orders a state conducted reassessment in the county under this section, the contract:

(1) is as valid as if it had been entered into by the department and

(2) shall be treated as the contract of the department.

(j) After receiving the report of assessed values from the appraisal firm acting under a contract described in subsection (i), the department of local government finance shall give notice to the taxpayer and the county assessor, by mail, of the amount of the reassessment. The notice of reassessment:

(1) is subject to appeal by the taxpayer under section 37 of this chapter; and

(2) must include a statement of the taxpayer's rights under section 37 of this chapter.

(l) The department shall forward a bill for services provided under a contract described in subsection (1) to the auditor of the county in which the state conducted reassessment occurs. The county shall pay the bill under the procedures prescribed by subsection (1).

(J) A county subject to an order issued under this section shall pay the cost of a contract described in subsection (i), without appropriation, from the county's property reassessment fund. A contractor may periodically submit bills for partial payment of work perl under the contract Notwithstanding any other law, a contractor is entitled to payment wider this subscction for work performed under a contract if the confractor:

(1) submits to the department a fully itemized, certified bill in the font required by IC 5-11-10-1 for the costs of the work performed, under the contract;

(2) obtains from the department:

(A) approval of the form and amount of the bill; and

(B) a certification that the billed goods and services have been received and comply with the contract; and

(3) flies with the county auditor:

(A) a duplicate copy of the bill submitted to the department;

(B) proof of the deparlnienfs approval of the form and amount of the bill; and

(C) the department's certification that the billed goods and services have been received and comply with the contract.

The department's approval and certification of a bill under subdivision (2) shall be treated as conclusively resolving the merits of a contractor's claim. Upon receipt of the documentation described in subdivision (3), the county auditor shall immediately certify that the bill is true and correct without further audit, publish the claim as required by IC 36-2-6-3 and submit the claim to the county executive. The county executive shall allow the claim, in fill, as approved by the department, without fin-ther examination of the merits of the dat in a regular or special session that is held not less than three (3) days and not more than seven (7) days after the completion of the publication requirements under IC 3 6 Upon allowance of the claim by the county executive, the county auditor shall immediately issue a warrant or check fir the fill, amount of the claim approved by the department. Compliance with this subsection constitutes compliance with section 28.5 of this chapter, IC 5-11-6-1, IC 5-11 - I and IC 36-2-6. The determination and payment of a claim in compliance with this subsection is not subject to remonstrance and appeal. IC 36-2-6-4(f) and IC 36-2-6-9 do not apply to a claim submitted under this subsection. IC 5 applies to a fiscal officer who pays a claim in compliance with this subsection,

(m) Notwithstanding IC 4-13-2, a period of seven (7) days is permitted for each of the following to review and act under IC 4-134 on a contract of the department entered into under this section:

(1) The commissioner of the Indiana department of administration.

(2) The director of the budget agency.

(3) The attorney general,

(n) If the money in a county's property reassessment thud is insufficient to pay for a reassessment conducted under this section, the department may increase the tax rate and tax levy of the county's property reassessment thud to pay tbe cost and expenses related to the reassessment.

(o) The department or the contractor of the department shall use the land values determined under section 13.6 of this chapter for a county subject to an order issued under this section to the extent that the department or the contractor finds that the land values reflect the true tax value of land, as determined under this article and the rules of the department. If the department or the contractor finds that the land values determined tbr the county under section 13.6 of this chapter do not reflect the true tax value of land, the department or the contractor shall determine land values for the county that reflect the true tax value of land, as determined under this article and the rules of the department. Land values determined under this subsection shall be used to the same extent as if the land values had been determined under section 13.6 of this chapter. The department or the contractor of the department shall notify the county's reassessment officials of the land values determined under this subsection.

(p) A contractor of the department may notify the department if:

(1) a county auditor fails to:

(A) certify the contractor's bill;

(B) publish the contractor's claim;

(C) submit the contractor's claim to the county executive; or

(D) issue a warrant or check for payment of the contractor's bill;

as required by subsection (1) at the county auditor's r legal opportunity to do so;

(2) a county executive fails to allow the contractor's claim as legally required by subsection (1) at the county executives' first legal opportunity to do so; or

(3) a person or an entity authorized to act on behalf of the county takes or fails to take an action, including failure to rcquest an appropriation, and that action or Ikilure to act delays or halts progress under this section for payment of the contractor's bill.

(q) The department, upon receiving notice under subsection (p) from a contractor of the department, shall:

(1) verify the accuracy of the contractor's assertion in the notice that:

(A) a failure occurred as described in subsection (p)(l) or (p)(2); or

(B) a person or entity acted or failed to act as described in subsection (p)(3); and

(2) provide to the treasurer of state the department's approval under subsection (l)(2)(A) of The contractor's bill with respect to which the contractor gave notice under subsection (p).

(r) Upon receipt of the department's approval of a contractor's bill under subsection (a), the treasurer of state shall pay the contractor the amount of the bill approved by the department front money in the possession of the state that would otherwise be available for distribution to the county, including distributions from the property tax replacement fund or distribution of admissions taxes or wagering taxes.

(s) The treasurer of state shall withhold from the money that would be distributed under XC 4-33-12-6, IC 4 'Ic 6-1.1-21-4(b) or any other law to a county described in a notice provided under subsection (p) the amount of a payment made by the Ireasurer of state to the contractor of the department under subsection (r). Money shall be withheld first from the money payable to the county under IC 6 and then from all other sources payable to the county.

(t) Compliance with subsections (p) through (a) constitutes compliance with IC 5-11-10.

(u) IC 5-11-10-1.6(d) applies to the treasurer of state with respect to the payment made in compliance with subsections (p) through (s). This subsection and subsections (p) through (a) must be interpreted liberally so that the state shall, to the extent legally valid, ensure that the contractual obligations of a county subject to this section are paid. Nothing in this section shall be construed to create a debt of the state.

(v) The provisions of this section are severable as provided in IC 1-1-1- 8(b).

(w) This section expires January 1, 2007.

Current through 2005 Public Laws approved and effective through April 22, 2005

Affidavit of Betsy J. Brand

I, Betsy J. Brand, am a member of the Indiana Board of Tax Review (the "Board") appointed by the Governor under Indinaa Code § 6-1.5-2-1. The Board's address is 100 North Senate, IGCN 1058(A), Indianapolis, Indiana 46204. I am over the age of 18 and have personal knowledge of an am authorized to make the following representations contained in this Affidavit.

1. I have held my current position with the Board since January 1, 2002. The Board is charged with administrative review of general reassessment appeals, specifically including appeals for assessments of property in Lake County for the 2002 reassessment performed under the authority of Indiana Code § 6-1.1-4-32 (the "Lake County Appeals"). The Board is a small state agency with a staff of fifteen administrative law judges to handle appeal proceedings.

2. In Miller Citizens Corp., et al v. Governor of the State of Indiana, et al., Cause No. 45D05-0404-PL-91, the Lake Superior Court, Room 5, issued a judgment on May 7, 2004, declaring and adjudging that all reassessments certified pursuant to I.C. 6-1.1-4-32 and 6-1.1-8.5 are null and void.

3. Taxpayers in Lake County had previously filed over five thousand (5,000) Lake County Appeals with the Board. Indiana Code § 6-1.1-4-34 requires the Board to hold an administrative hearing for each Lake County Appeal, and thereafter to review the recommendations of the special master and make a final determination based on the findings of the special masters. The statute expires on December 31, 2005, effectively limiting the amount of

time within which the Board must decide the Lake County Appeals to nineteen months.

4. The Miller Citizens Corp. decision effectively voids all of the Lake County Appeals pending before the Board, derailing months of planning to get a system in place to handle the enormous number of Lake County Appeals. The Board has taken numerous actions to administer the Lake County Appeals that are damaged by the Miller decision, including:

a) The Board has scheduled the first ninety-five (95) hearings for the Lake County Appeals . The hearings were to take place beginning June 1, 2004. Due to the judgment in Miller, no further hearings are being scheduled at this time. The Board will be forced to continue those hearings that have been scheduled indefinitely, pending the outcome of anticipated appeals of the Miller decision.

b) The Board has contracted with five (5) special masters under IC 6-1.1-4-34(e) to serve as the core of its Lake County Appeals hearing "team". Extensive training for these contractors was scheduled for May 12, 2004. Because of the Miller decision, the Board has postponed the training indefinitely. Furthermore, some of the contractors have informed me that their availability is limited to the summer months, and that they are dependent on the income from the contract. The uncertainty flowing from the Miller decision makes it very possible that some of the contractors will be unavailable when we need to do the most intensive work, or that we will lose their services altogether.

c) The Board has appointed seventeen (17) members of its staff (the fifteen administrative law judges and the

Board members themselves and the five contractors to serve as special masters to hold Lake County Appeals. The Board had planned to use the five contractors to hear appeals full-time, as to rotate the rest of the staff up to Lake County in order to hold the necessary number of hearings to stay on schedule. The loss of the contractors would force heavier reliance on the administrative law judges and compromise the effectiveness of the Board to meet its statutory obligations.

d) The Board was planning to focus its effort heavily upon the Lake County Appeals during the next four to six months so that we would be able to then shift some of our resources to appeals from other large counties (Allen, Marion, and St. Joseph) that will reach us later this year. Because the Miller decision has forced use to postpone all Lake County related activities, and if that decision is ultimately overturned, we could be forced to do Lake County Appeals at the same time as the other large counties - substantially reducing the amount of human resources available and our ability to meet statutory deadlines on a statewide basis.

e) The subject of the appeals - the assessments - have been declared null and void, making any further proceedings on them meaningless under the Miller decision. Additionally, the party designated by IC 6-1.1-4-34(h)(2) to respond to the Lake County Appeals, the Department of Local Government Finance, is effectively enjoined from participating. As such, it is impossible to move forward with the hearings at this time.

5. The Board is required by Indiana Code § 6-1.1-3-34(g)(2) to give notice that a hearing has been scheduled a minimum of thirty days before the date of the hearing. Thus, in addition to the amount of time that the

Board's appeal process is delayed by the Court's actions, another month must be added to account for the notice period.

6. The Board must hold hearings on all 5,000+ of the Lake County Appeals within one year of the filing in order to realistically expect to meet its obligations to complete its work in Lake County by December 31, 2005. Before the Miller decision forced postponement of the Board's efforts, the Board would have had to hold an average of approximately 420 hearings per month beginning June 1, 2004, to have the hearing phase finished by May 1, 2005. That would have left approximately eight months to complete review and issue final determinations on all Lake County Appeals.

7. If the Miller decision is ultimately reversed, the Board will still be bound by the December 31, 2005 deadline, but will have fewer months to review and issue decisions. For example, a three month delay for Court action would force the Board to send out hearing notices in August, begin holding hearings in September, and leave only four months at the end of 2005 to review and issue the 5,000+ final determinations. This would be an impossible task given the current resources available to the Board.

Executed this 11th day of May, 2004.

s/ Betsy J. Brand
Betsy J. Brand

State of Indiana)
) SS:
County of Marion)

Before me, a Notary Public for Marion County, Indiana, personally appear Betsy J. Brand, who being first duly sworn , acknowledged the execution of the foregoing Affidavit and state that any representations contained therein are true.

Witness by hand and Notarial Seal this 11th day of May, 2004.

S/ Susan L. Jeffries
Signature

Susan L. Jeffries
Printed Name

I am a resident of Johnson County.
My commission expires: 7/7/2008

FINAL DETERMINATION

In the matter of the 2002 General Reassessment of: ISG Integrated Mill, Lake Co., Indiana

The Honorable Paul G. Karras
Lake County Assessor
2293 N. Main Street
Crown Point, IN 46307

The Honorable Stephen "Bob" Stiglich
Lake County Auditor
2293 N. Main Street
Crown Point, IN 46307

Mr. Adam R. Beckler
Senior Tax Analyst
International Steel Group, Inc.
3250 Interstate Drive, 2nd Floor
Richfield, Ohio 44286-9000

Re: Review of Preliminary Certification of the 2002 Real Property True Tax Value for ISG Integrated Steel Mill, Lake County, Indiana

The Department of Local Government Finance has examined and considered all findings presented by or on behalf of the industrial company and the Lake County Assessor pursuant to 50 IAC 19-2-3(b) supporting additions or corrections to the preliminary value as authorized by the administrative rules. The final assessed value for the Industrial Company for the March 1, 2002 assessment date as determined by the Department is as follows:

Forty-Four Million, Seventy-seven Thousand, Nine Hundred Dollars

$44,077,900

Small variations between this final value and the preliminary value may be due to rounding of the values allocated to the separate parcels. An allocation of this value to all real property parcels is attached as Exhibit A to this order.

This order shall be final and conclusive within thirty (30) days after the date of this notice unless an appeal is filed with the Indiana Board of Tax Review as provided by IC 6-1.1-8.5-11

If you have any questions, feel free to call Kurt Barrow at (317) 232-3763.

Dated this 27th day of February 2004.

S/ Beth Henkel
Beth Henkel, Commissioner

Attested by:

S/ Kostas Poulakidas
Kostas Poulakidas, Deputy Commissioner

FINAL DETERMINATION

In the matter of the 2002 General Reassessment of:Ispat Mill, Lake Co., Indiana

The Honorable Paul G. Karras
Lake County Assessor
2293 N. Main Street
Crown Point, IN 46307

The Honorable Stephen "Bob" Stiglich
Lake County Auditor
2293 N. Main Street
Crown Point, IN 46307

Mr. Kenneth E. Walker
Tax Manager, State & Local Taxes
Ispat Inland, Inc.
3210 Watling Street MC8-229
East Chicago, IN 46312

Re: Review of Preliminary Certification of the 2002 Real Property True Tax Value for Ispat Inland Integrated Steel Mill, Lake County, Indiana

The Department of Local Government Finance has examined and considered all findings presented by or on behalf of the industrial company and the Lake County Assessor pursuant to 50 IAC 19-2-3(b) supporting additions or corrections to the preliminary value as authorized by the administrative rules. The final assessed value for the Industrial Company for the March 1, 2002 assessment date as determined by the Department is as follows:

Eighty-one Million, Seven Hundred and Seventeen Thousand, Nine Hundred Dollars

$81,717,900

An allocation of this value to all real property parcels is attached as Exhibit A to this order.

This order shall be final and conclusive within thirty (30) days after the date of this notice unless an appeal is filed with the Indiana Board of Tax Review as provided by IC 6-1.1-8.5-11

If you have any questions, feel free to call Kurt Barrow at (317) 232-3763.

Dated this 27th day of February 2004.

S/ Beth Henkel
Beth Henkel, Commissioner

Attested by:

S/ Kostas Poulakidas
Kostas Poulakidas, Deputy Commissioner

FINAL DETERMINATION

In the matter of the 2002 General Reassessment of:
United States Steel Gary Works

The Honorable Paul G. Karras
Lake County Assessor
2293 N. Main Street
Crown Point, IN 46307

The Honorable Stephen "Bob" Stiglich
Lake County Auditor
2293 N. Main Street
Crown Point, IN 46307

Mr. Michael J. Prendergast, Esq.
U. S. Steel Group Taxes
600 Grant Street
Pittsburgh, PA 15219-2749

Re: Review of Preliminary Certification of the 2002 Real Property True Tax Value for United States Steel Integrated Steel Mill, Lake County, Indiana.

The Department of Local Government Finance has examined and considered all findings presented by or on behalf of the industrial company and the Lake County Assessor pursuant to 50 IAC 19-2-3(b) supporting additions or corrections to the preliminary value as authorized by the administrative rules. The final assessed value for the Industrial Company for the March 1, 2002 assessment date as determined by the Department is as follows:

One Hundred Thirteen Million, Six Hundred Sixty-Four Thousand, One Hundred Dollars

$113,664,100

Small variations between this final value and the preliminary value may be due to rounding of the values allocated to the separate parcels. An allocation of this value to all real property parcels is attached as Exhibit A to this order.

This order shall be final and conclusive within thirty (30) days after the date of this notice unless an appeal is filed with the Indiana Board of Tax Review as provided by IC 6-1.1-8.5-11

If you have any questions, feel free to call Kurt Barrow at (317) 232-3763.

Dated this 27th day of February 2004.

S/ Beth Henkel
Beth Henkel, Commissioner

Attested by:

S/ Kostas Poulakidas
Kostas Poulakidas, Deputy Commissioner

Parcel #	**Land Value**	**Imp. Value**	**Total Value**
001 25 40 0024 0001	$19,200	$0	$19,200
001 25 40 0024 0002	$26,400	$0	$26,400
001 25 40 0024 0013	$3,600	$0	$3,600
001 25 40 0026 0008	$111,800	$0	$111,800
001 25 40 0028 0001	$154,600	$0	$154,600
001 25 40 0033 0004	$528,700	$0	$528,700
001 25 40 0109 0001	$2,200	$0	$2,200
001 25 40 0125 0002	$1,46,200	$0	$1,465,200
001 25 40 0125 0020	$307,400	$0	$307,400
001 25 40 0127 0001	$110,400	$0	$110,400
001 25 40 0130 0005	$60,700	$96,700	$157,400
001 25 40 0130 0006	$250,400	$0	$250,400
001 25 40 0130 0010	$674,700	$0	$674,700
001 25 40 0132 0001	$2,686,600	$17,200	$2,703,800
001 25 40 0133 0001	$205.200	$4,300	$209,500
001 25 40 0133 0002	$1,286,300	$0	$1,286,300
001 25 40 0133 0003	$932,700	$0	$932,700
001 25 40 0134 0001	$8,642,900	$27,000	$8,69,900
001 25 40 0138 0001	$6,600	$0	$6,600
001 25 40 0142 0008	$351,700	$0	$351,700
001 25 40 0160 0001	$3,610,200	$2,154,800	$5,765,000
001 25 40 0181 0001	$4,397,300	$4,019,200	$8,418,500
001 25 40 0162 0001	$2,272,500	$6,800,400	$9,072,900
001 25 40 0163 0001	$4,077,600	$8,712,400	$12,790,000
001 25 40 0164 0001	$5,872,700	$2:834,100	$8,706,800
001 25 40 0165 0001	$781,600	$473,300	$1,254,900
001 25 40 0166 0001	$5,321,000	$16,849,900	$22,170,900
001 25 40 0167 0001	$3,239,800	$6,455,600	$9,695,400
001 25 40 0168 0001	$8,933,300	$5,240,300	$14,173,600
001 25 40 0170 0001	$609,900	$0	$609,900
001 25 40 0170 0002	$8,200	$0	$8,200
001 25 40 0170 0011	$613,700	$0	$613,700
001 25 40 0171 0001	$618,000	$51,800	$669,800
001 25 40 0171 0014	$469,400	$0	$469,400
001 25 40 0172 0001	$1,265,400	$9,200	$1,274,600
Totals	$59,917,900	$53.746,200	$113,664,100

UNITED STATES STEEL
GARY WORKS

December 31, 2003

The Honorable Paul G. Karras
Lake County Assessor
2293 N. Main Street
Crown Point, IN 46307

The Honorable Stephen "Bob" Stiglich
Lake County Auditor
2293 N. Main Street
Crown Point, IN 46307

Mr. Michael J. Prendergast, Esq.
U. S. Steel Group Taxes
600 Grant Street
Pittsburgh, PA 15219-2749

Re: Preliminary Certification of the 2002 Real Property True Tax Value for United States Steel Integrated Steel Mill, Lake County, IN.

Gentlemen:

Pursuant to 50 IAC 19 and IC 6-1.1-8.5-8, the Department of Local Government Finance (DLGF) has determined the true tax value (TTV) of the real property located on the United States Steel Integrated Steel Mill (subject property) located in Lake County, IN. The TTV is for the March 1, 2002 assessment date.

This letter serves as a certification of the preliminary determination of the TTV of the subject property to the Lake County Auditor, Lake County Assessor, and taxpayer as required by 50 IAC 2-3(a). The preliminary TTV of all real property located on the subject property is :

One Hundred Thirteen Million, Six Hundred Seventy-Two Thousand, One Hundred and Eighty-Eight Dollars

$113,672,188

Pursuant to 50 IAC 19-2-3(b), the county assessor and the taxpayer have thirty (30) days to review the certified preliminary TTV to determine its validity and may present findings to the DLGF. The DLGF may make additions or corrections to the TTV. We ask that you contact us as soon as possible with any questions or concerns.

Once the TTV is finalized, it will be allocated to all real property parcels that make up the entire mill complex. It is our intent to work with the taxpayer in making this allocation.

Any evidence or official correspondence should be addressed to Commissioner Beth Henkel at the address on this letter. Technical questions regarding the TTV may be directed to Kurt Barrow, Director of Assessments, at 317/232-3762.

Sincerely,

S/ C. Kurt Barrow
C. Kurt Barrow
Director of Assessments

cc: Beth Henkel, Commissioner, DLGF
Dan Repay, Director of Taxation, Lake County Auditor's Office (email)
Sherry Feuerborn, Deputy Assessor, Lake County Assessor's Office (email)